STATE LANDS AND INVESTMENTS

Montana Legislative Council

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Report Number 4

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STATE LANDS AND INVESTMENTS

A REPORT TO THE THIRTY-SEVENTH LEGISLATIVE ASSEMBLY

by the

Montana Legislative Council

November 1960

To members of the Thirty-seventh

Legislative Assembly:

The state of Montana administers over five million acres of land held in trust for the benefit of our schools and other institutions. Because every dollar of income from the land or the funds arising from the land are tax replacement dollars, the manner in which these lands are administered is of importance to every citizen of the state.

This report was prepared pursuant to House Joint Resolution No. 4 and represents the research, conclusions and recommendations of the Legislative Council on the subject of state lands and investments. The Council believes that the report will provide the Legislative Assembly with the background material necessary to reach sound legislative decisions.

Respectfully submitted,

SENATOR ROBERT A. DURKEE
Chairman
Montana Legislative Council

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1959 - 1960

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HOUSE JOINT RESOLUTION NO. 4

A HOUSE JOINT RESOLUTION REQUESTING AND DIRECTING THE MONTANA LEGISLATIVE COUNCIL TO MAKE A COMPLETE STUDY OF THE LAWS, REGULATIONS AND ADMINISTRATION OF THE STATE LANDS AND INVESTMENTS OF THE STATE OF MONTANA TO DETERMINE WHETHER THE MAXIMUM REVENUE IS BEING DERIVED FROM THESE LANDS AND INVESTMENTS AND TO RECOMMEND WAYS IN WHICH SUCH REVENUE MAY BE ADJUSTED IF NECESSARY.

WHEREAS, no systematic study of the administration of and revenue from the state lands and investments of the state of Montana has been made in many years; and

WHEREAS, it appears that the state and the various beneficiary funds may not be realizing all the revenue that should be realized from the said state lands and investments; and

WHEREAS, it is the command of our constitution and laws that the greatest possible amount of revenue consistent with fairness should be realized from the state lands and investments;

NOW, THEREFORE, BE IT RESOLVED, that the legislative council be authorized and directed during the coming biennium to make a thorough and complete study of the laws and regulations pertaining to state lands and investments and to the administration and revenues of the state lands and investments under those laws and regulations, and report and recommend to the coming legislative assembly on the present conditions and any improvements which they feel necessary.

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SUMMARY OF REPORT

Introduction

Montana's federal land grants and permanent funds are worth about 100 million dollars. Every dollar of income from the land or the funds accrues to the benefit of the public schools or other state institutions, and takes the place of a dollar which otherwise would have to be raised through direct taxation upon the people of the state.

The History and Purpose of Federal Land Grants

Montana has received federal land grants of more than 5,800,000 acres, an area larger than either Massachusetts or New Jersey. The constitution of the state specifies the special purpose and status of state lands by providing that they " . . . shall be public lands of the state, and shall be held in trust for the people . . . " Thus, the lands and funds arising from them are not outright property of the state, but constitute a trust which the state must administer so as to secure full return to the beneficiaries. The state does not have the right to be generous in the disposition of any interest in state lands, no matter how good and worthy the cause or the undertaking may be for which the land is wanted. The land grants were made for the single purpose of obtaining revenues for our public schools and other state institutions.

Administration of the Department of State Lands and Investments

Montana's federal land grants are under the supervision of the state board of land commissioners; however, the administration is divided into two divisions, one headed by the commissioner of state lands and investments and the other headed by the state forester.

The commissioner of state lands and investments is appointed by the governor, although he is responsible to the board of state land commissioners. There is much confusion as to whether initiative lies with the commissioner or the board on many matters. While the board should function primarily as a deliberative, quasi-legislative and judicial agency, it actually spends much of its time dealing with administrative details. These administrative efforts are made at the expense of the board's policy-making role; when presented with questions involving basic policy the Board often makes decisions without adequate information, or bases its decision on only a vague, undefined policy.

While centralization of responsibility in the office of governor is desirable, responsibility where it does lie must be accompanied by commensurate authority. The responsibility for state lands reposes in a constitutional board; therefore, the Council recommends that the commissioner be appointed by that board, be responsible to it and serve at its pleasure. The board of land commissioners should confine itself to policy creating and enforcing functions only. The commissioner should be allowed wide latitude in his administrative duties, functioning within the rules set up by the board. The commissioner should appear before the board to get approval of purely administrative acts only in extremely unusual cases. When such matters are brought before the board, the board should be presented with sufficient facts for it to exercise considered judgment.

The Council also recommends that the commissioner's administrative authority be increased by allowing him to cancel leases for violation of lease terms. Well-defined procedures for appeal to the board should accompany such authority. The board should also define, codify and publish its rules and policies if it is to function effectively.

No matter how well the state land office is run, the administration of state agricultural and grazing lands will be no better than the performance of the field men. The state land office employs four full-time field men and six temporary men for two months dur-

ing harvest time to aid in checking crop returns. The four territories assigned to the permanent field men range from 27,675 square miles to 42,157 square miles in size. Each of the territories contains more than one million acres of state agricultural and grazing lands. Even if periodical appraisal of the land were the only duty of the field men, the job would be next to impossible because of the size of the territory assigned to each.

Political considerations influence the appointment of the chief field agent and field men. The Council recommends that minimum statutory requirements of experience and training be established for the position of chief field agent and that that position be insulated from political consideration by a law protecting him from removal except for cause.

The department of state lands and investments is presently divided into seven "offices". There seems to be no valid reason for the dispersion of duties among the various semi-independent groups working in the Department. If compatible functions were grouped together, personnel savings and greater efficiency and flexibility could be realized. It is suggested that the seven "offices" be consolidated into five.

The record system of an office charged with the administration of over five million acres of state land is important. To a large extent the nature of the records dictates procedure and to some degree affects the entire program. Much of the data necessary for an intelligent evaluation of procedures and policy is not readily available within the office. Without fear of contradiction, it is possible to state that the office's records are inadequate and that the record system is antiquated.

Sale of State Lands

Of land grants totaling approximately 5,870,000 acres, Montana has retained over 5,170,000 acres. The present policy of the state board of land commissioners is apparently not to sell agricultural land, although there have been deviations from this policy. The board sells grazing land upon request if adequate prices can be obtained. From 1945 to 1960 a total of 378,000 acres of state land were sold. This amounts to an average of 23,000 acres per year.

Assuming that adequate rentals for state lands will be established and that it will be possible to secure sufficient field supervision in the future, the Council believes that the lands themselves represent the best type of investment. Because the state is limited in its investment of funds arising from the lands to general obligation bonds and government securities which are affected by inflation, the lands represent a more secure asset which enables the state's trust funds to benefit by a capital gain commensurate with the growth of the economy. The Council recommends, therefore, that sale of state lands not be promoted and that limited quantities continue to be sold only when necessary.

Conservation of Land Resources

A number of practices adopted in the department of lands and investments, or by statute by the legislature, have encouraged conservative land use. Among these are the 50-50 summer fallow program, the lengthening of lease terms, provision for reimbursement for improvements, and a preference right to renew leases by matching the highest bid.

The Council believes that these are all sound practices in theory, but some have been subject to abuse or made ineffective by lack of adequate administrative machinery.

The Council recommends that improvements which do not relate to land use should not be permitted. The construction of expensive residential dwellings on state lands stifles competitive bidding and causes the board to deviate from its policy of not selling certain types of state lands. An amendment to existing statutes is recommended to prohibit this practice in the future.

A state land lease is a written contract which by its own provision is subject to cancellation for violation of its terms. However, at the present time board action is necessary, and a long, awkward procedure for the cancellation of leases has been established. The Council recommends that the commissioner be given express authority to cancel leases for violations without first obtaining the Board's permission. No board action should be necessary, except on appeals, procedures for which should be clearly specified by law. It should not be necessary for the commissioner to prove before the board why the lease should be cancelled. Giving the commissioner the power to cancel leases would make it necessary for the lessee to demonstrate to the board why the lease should not be cancelled.

There is an absence of positive conservation measures in the state land program. The record system does not lend itself to gathering necessary information on productivity or potentiality of state lands. Little effort is made to compile such data and consequently it is impossible to tell how the production of state lands compares with their inherent capacities. The office also fails to make systematic use of land data compiled by other state or federal agencies.

Agricultural Lease Rentals

Although agricultural leases comprised only 10% of the total surface acreage leased, in 1960 income from this acreage accounted for 66% of all income from surface acreage.

The department of lands and investments has never compiled complete data on average yields and prices received either by county or on a state-wide basis for the various crops raised on state lands. Neither has it determined the acreage seeded to each of the different crops. Consequently, the state as a landlord does not know how crop yields on state lands compare with average yields on other lands and is not able to determine how its acreage is being used or how well or how poorly its tenants are performing. The Council recommends that the state land office compile data on state-owned acreage seeded to each crop as well as state-wide average yields and prices received. This is basic information which any landlord must have in order to evaluate the quantity and quality of crops his tenants are producing and to determine what degree of success he has achieved in securing his crop share.

Since 1927 statutory provisions for crop share rentals on agricultural land have been in effect. The present statute provides that rental on agricultural land shall be one-quarter of the annual crop, or the landlord's share prevailing in the district, whichever is greater. The state board of land commissioners has totally disregarded this statutory directive. In many areas of the state landlord shares exceeding ¼ of the crop prevail. Yet a crop share of ¼ is charged for all state non-competitive agricultural leases. The Council recommends that the state board of land commissioners vigorously apply the statutory minimum rental for the prevailing landlord share in areas where this exceeds ¼ of the crop. The board's failure to enforce this minimum rental in the past is inconsistent with the purpose of securing full rentals from state lands.

Grazing Lease Rentals

Since 1952 the state has charged rentals on state grazing lands by means of a formula used to compute an animal-unit-month fee. The use of the formula has resulted in AUM fees on state grazing land ranging from a low of 25c in 1957 and 1958 to a high of 44c in 1960. The 1959 legislature added a temporary 10c bonus to the figure resulting from the formula for the period February 28, 1960 to February 28, 1961.

How closely the minimum rental for state grazing land approximates "market value" can be evaluated by a comparison of the state's rental with fees charged by federal agencies

and with rentals received in private transactions. The fact that landlord services sometimes exist in commercial contracts must be taken into account when state leases are compared with commercial leases.

The comparison reveals that the state minimum rental for 1959 was below fees charged for Indian land, land utilization land, and below the lowest fees charged by the forest service. Only the Taylor grazing lands rental was less than the charge for state grazing land. The highest fee charged by the forest service was almost three times the state's 1959 fee of 28c and the lowest fee was 25% higher. These comparisons are especially significant because, with the exception of Indian lands, the receipt of revenue is not a primary consideration in the administration of federal lands as it is with state land. The object of state lands ownership is the greatest possible income consistent with conservative use of the land. For the federal government this goal is subordinate, the production of income being only an incidental end.

The 1960 minimum fee for state land is 54c, which compares more favorably with charges made by federal agencies in 1959. It is more than some of the forest service's lower fees, but it is still below the land utilization rental and below the forest service's higher figures and less than the average for Indian land.

A comparison of the state's minimum fee with commercial rentals shows still more contrast. Most commercial rentals probably fall between $2.00 or $2.50 and $4.00 per AUM. Thus, the state fee for 1960 is about ¼ of what would be considered minimum payment for grazing on private land.

A comparison of interest payments and property taxes on purchased land to minimum state grazing rentals indicates that it is much cheaper to lease than to buy state grazing land.

Were it not for competitive bidding, income from grazing land in 1958 would have been less than what property tax income would have been if the land were privately owned. Had all the lands been leased for the minimum rental, the average per acre income would have been 7.7c, or less than the state-wide average tax on grazing land.

While the value of state land is often minimized because of its alleged "isolation", or its alleged inferior quality, these statements are of dubious validity. The fact that sections of state land are isolated from one another does not make them less valuable to an operator whose private lands are contiguous. Because state lands are spread throughout the state they generally consist of equal parts of good and bad land.

The conditions of state leases are generally favorable to the lessee. All decisions of range use are left to the lessee and he is allowed to post lands against hunting and fishing. State lessees also have the right of tenure up to 10 years, and if no other bids are received the expiring lease may be renewed at the minimum rental. If the threat of competition is present, the lessee may retain the lease by matching the highest bid without submitting a bid of his own. Another factor in the lessee's favor is his right to compensation for any improvements he has placed on the land in the event it is sold or leased to another operator.

Low rentals on state grazing lands tend to subsidize those operators who control large tracts of state land and put operators who make only incidental use of state land, or lease no state land, in an unfavorable competitive position. Furthermore, because non-competitive grazing rentals bring in little more income, if any, above what property taxes would supply, the burden of deeded land to furnish funds for schools and local government is increased.

Under present law competitive bidding for leases is possible; however, statutes and administrative practices do not foster competition. The individual desiring to lease state lands, not the land office, must take the initiative. While advertisement of lease expiration dates might increase income and stimulate interest in the leasing of state lands, in the

absence of definite data the results of such a program cannot be predicted. Since the vast majority of leases will probably always be non-competitive, a fair minimum AUM rental must be the key to adequate income.

The formula used to determine grazing fees ought to be simple, flexible, and capable of insuring rentals commensurate with the market value of the land. As measured by these criteria the present formula totally fails. It is unnecessarily complex and is predicated on the use of a base period that may be inherently unsound in light of present conditions. The formula is subject to abuse by the substitution of unreal figures to achieve predetermined results. By maintaining the appearance of a scientific and precise technique the present formula tends to conceal this tampering. Because the figures employed in the base ratio are arbitrary the formula is a fiction and the principle on which the formula should rest has been denied.

The Council recommends that the present formula be replaced by a simplified one consisting of a small base fee plus multiples of current beef prices. The Council recommend that a 50c base fee be added to 2½ times the average price of beef in the previous year to determine the total AUM fee. This would result in an AUM fee about 1/3 of prevailing commercial rentals. For the year 1961 the use of this formula would result in an AUM fee of $1.01.

Miscellaneous Recommendations

VARIABLE LEASE TERMS

Under present statutes the maximum lease term for agricultural and grazing leases is 10 years. The land office accommodates lessees' requests for shorter terms. A lease term for less than 10 years is generally resorted to when a lessee desires to avoid competition. The Council recommends that lease terms of only five and ten years be offered to lessees and that all persons previously expressing an interest in leasing the land be notified upon expiration or cancellation of the lease.

BLOCK LEASING

The present land office policy does not favor breaking up large blocks of state lands into individual leases. Consequently, individuals attempting to bid for a section which is one of several sections held under a single lease have been prevented from doing so.

The Council does not believe that state lands should necessarily be distributed equally among potential lessees. The only concern of the state should be to secure the maximum return to the trust funds, regardless of who leases the lands. However, when competitive bids are rejected as a matter of course because the bid is for less than all of the state sections held under a lease, in many cases the greatest income is not realized. In order to secure the fullest possible return to the state, the Council recommends that competitive bids for less than the full number of sections held under one lease be accepted as long as the total rental for the new lease plus the rental for the remaining sections would not be less than the total rental for the original lease.

TRESPASS ON STATE LANDS

Present laws provide little protection against trespass on state lands. The state cannot police more than 5 million acres of lands scattered throughout the state; neither can it fence all its lands. In view of the special position of state lands the Council recommends that state lands be protected by law from wilful trespass by persons and livestock to a degree at least equal to federal lands and lands within state cooperative grazing districts.

MORTGAGE LANDS

Sections of the codes relating to state lands are sprinkled with special references to "mortgage lands", or lands to which the state acquired title when farm mortgage loans became delinquent during the 1920's. By 1952 losses to permanent fund principal and interest had been fully recovered, and in 1953 the remainder of more than 300,000 acres of mortgage lands were transferred to the common school grant. Since the lands are now part of the school grant, there is no need for special statutory provisions, and they should be repealed.

Investments

The state board of land commissioners, the constitutional body responsible for the leasing of lands and the investment of funds arising from the sale of those lands, is also responsible by statute for investing moneys originating from other public funds.

The "unified investment plan" which was enacted in 1953 created three funds: (1) the Montana trust and legacy fund, (2) the long-term investment fund, and (3) the short-term investment fund. Each of the funds is composed of different moneys and each is subject to different restrictions and provisions as to permissible types of investments. The law requires any department of state government, which has under its administration any funds subject to investment, to submit such funds to the state land board for investment. However, the unified investment plan exists in name only. The board, in fact, does not invest moneys for other departments of government. The investments are made by the departments themselves, sometimes subject to retroactive approval by the board.

The constitution places stringent limitations on the types of investments which can be made with moneys in the trust and legacy fund. The result of these restrictions is to make the fund especially susceptible to inflationary effects since the principal remains constant during periods of rising prices.

Some other states are experimenting with the investment of trust funds in high-grade corporate securities. Certainly, however, no such program should be contemplated in Montana until a sound, well-regulated investments program under the direction of experienced investments administrators has been established in the state.

Another condition which tends to reduce the possibility of earnings of the Montana trust and legacy fund is the restrictions placed on the sale of securities. While a court interpretation of the constitution would be necessary to define the precise degree of the restriction, in general, the state may not realize a temporary capital loss by selling its securities, even though it may be assured of recouping that loss through increased interest income. It may be that the state is wise to freeze its funds in this manner and to hedge the sale of securities with restrictions; however, under such restrictions the state will probably never achieve the rate of return on government securities realized by private investors.

The apparent rate of return on the investment of Montana's trust and legacy fund was about 2.8% for the years 1956, 1957 and 1958. As a general statement it would be fair to say that the state is not doing too badly in its investment of the Montana trust and legacy fund. Because of the inherent differences between government and private business, the state may never realize a rate of return on its investments equal to that of insurance companies, banks and mutual funds, and perhaps should not be expected to. However, even within the present restrictions, with the addition of trained personnel, the state could undoubtedly increase its earnings.

INTRODUCTION

The department of state lands and investments is an administrative agency important to all Montanans. Federal land grants for education and institutional purposes and permanent investment funds arising from land grants at this time are worth about one hundred million dollars. H. V. Bailey, an early administrator of state lands, referred to these assets as "a heritage too great to be carelessly handled". He added:

> ***It is a matter of regret that too few of the citizens of Montana are cognizant of the great responsibility involved. The administration of the affairs of this department practically affects every man, woman, and child in Montana. . . . I respectfully submit that Montana possesses an asset in its state lands that should not only be appreciated but should be safeguarded by laws looking to the efficient administration of its affairs and to carrying on of a well-defined policy looking to the future.***[1]

A later commissioner of state lands expressed the importance of state lands and investment funds as follows:

> ***Every dollar of the income accrues to the benefit of the public schools, the State itself and its various institutions, and it takes the place of another dollar which otherwise would have to be raised through direct taxes upon the people of the State.***[2]

In the past legislators have differed widely in their opinions on how much revenue should be realized from state lands and investments. Because some legislators felt that the state "may not be realizing all the revenue that should be realized" from its state lands and investments, the 1959 legislative assembly adopted House Joint Resolution No. 4 which appears above. The resolution directed the Legislative Council to make a "thorough and complete" study of the administration of state lands and investments and to recommend to the next legislative assembly necessary improvements.

While this report does not cover mineral leases or state forest lands administered by the state forester, the Council believes that it will inform Montana's legislators and citizens of some important areas of the administration of state lands and investments and that the recommendations made will result in more income and improved administration. A future study of mineral leases and forest lands may prove profitable.

The Council's state lands and investments subcommittee included in its work a two-day field inspection of state lands. With the assistance of a deputy field agent of the department of state lands and investments, the subcommittee on September 22 and 23, 1959, examined sections of state land in Yellowstone, Musselshell, Golden Valley, Wheatland, Meagher and Broadwater counties.

On November 23, 1959, the subcommittee also held a public hearing which was suggestive of many ideas. The subcommittee wishes to express its appreciation to the following persons who participated in the hearing by offering testimony or written statements: Gene Etchart, President, Montana Stockgrowers Association; Elmer Hanson, Claude Kiff and A. C. Grande Jr. of the Meagher County Livestock Association; Mons Teigen, Secretary of the Montana Grass Conservation Committee; Representatives John Leuthold of Stillwater county, Oscar Kvaalen of Richland county and Francis Bardanouve of Blaine county; D. D. Cooper, Executive Secretary of the Montana Education Association; Leonard Kenfield, President, Montana Farmer's Union; Sam Smeding, representing the Association of Montana State Grazing Districts; and Arthur H. Roth, Jr.

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[1] Biennial Report of the Register of State Lands for the fiscal years 1921-1922, p. 10.

[2] Report of the Commissioner of State Lands and Investments for the fiscal years 1928-1930, p. 5.

Many individuals and agencies aided the subcommittee in its work. The Council wishes to express its appreciation to P. J. Creer, statistician in charge of the Helena office of the Agricultural Marketing Service, U. S. Department of Agriculture; Albert H. Kruse, Montana Commissioner of Agriculture; U. S. Forest Service officials in Montana, particularly Vern Hamre and Bill Evans of the Helena National Forest; officials of the Bureau of Land Management and the Bureau of Indian Affairs in Montana; and Dr. Johan Asleson, Dr. Layton S. Thompson, Dr. Gene F. Payne and Karl G. Parker of Montana State College.

The Council was assisted in its study of investments by an investments task force composed of S. H. Finger, First National Bank and Trust Company of Helena; James H. Dion, Union Bank and Trust Company of Helena; Richard C. Timmerman, Commerce Bank and Trust Company of Helena; and J. Willard Johnson of Western Life Insurance Company. The Council wishes to express its gratitude to these men for the time spent in assisting the subcommittee through their informed opinions and helpful suggestions.

The Council especially wishes to acknowledge its appreciation of the friendly and complete cooperation and assistance it received from Commissioner of State Lands and Investments, Lou E. Bretzke, and his employees.

Chapter I

THE HISTORY AND PURPOSE OF FEDERAL LAND GRANTS

Through the course of our history the federal government acquired piecemeal a public domain of 1462 million acres. By means of grants, sale or under various homestead provisions, the central government has disposed of more than a thousand million acres to railroad corporations, states and individuals.

The principle of federal land grants for the support of education is older than the federal constitution. On May 20, 1785 the continental congress adopted the famous land ordinance which provided for a rectangular survey of the public domain and the reservation of Section 16 of every township "for the maintenance of public schools". From the admission of Ohio in 1803 to 1848 each new state received a section of 640 acres in each township for the support of public schools. Grants gradually increased in amount. When the territory of Oregon was established in 1848, congress adopted the practice of dedicating two sections in each township, the now familiar 16's and 36's, to public schools. Montana was admitted to statehood when this policy was in force. Later when Utah, Arizona, and New Mexico were admitted into the union, public school grants were increased to four sections in each township.

Federal land grants also gradually assumed a broader purpose. To the long established grants for common schools, congress added grants for universities, normal schools, public buildings, penal institutions, deaf and dumb asylums and other charitable institutions. On July 2, 1862 congress passed an act second only to the land ordinance of 1785 in its importance for public education in the United States. This was the Morrill act which provided for land grants to each state of 30,000 acres for each member of Congress from that state. Income from the land and from permanent investment funds made up of proceeds of sales of this land was earmarked for the support of public colleges teaching "agriculture and mechanic arts".

Montana has received federal land grants of more than 5,800,000 acres. These are shown in the table below. Only eleven states, including Alaska, received larger grants. The total acreage of Montana's federal land grants amounts to more than 6% of the area of the state or more than 9,000 square miles, an area larger than either Massachusetts or New Jersey.

MONTANA'S FEDERAL LAND GRANTS

GRANT	ACREAGE
Public Schools	5,198,258.00 [1]
Montana State College	140,000.00
Montana State University	46,720.84 [2]
School of Mines	100,000.00
Normal Schools	100,000.00
Reform School	50,000.00
Deaf and Dumb Asylum	50,000.00 [3]
Capitol Buildings	182,000.00
Militia Camp	640.00 [4]
Agricultural and Manual Training School	2,000.00 [4]
TOTAL	5,869,618.84

[1] This figure is taken from U.S. Department of Interior General Land Office publication *School Lands, Land Grants to States and Territories for Educational and Other Purposes*, 1939. Approximately 10,360 acres of lieu selections have yet to be made. The exact acreage of this grant cannot be determined because some sections are unsurveyed.
[2] Includes special grants of 480 acres for an observatory and 160.84 acres for a biological station.
[3] 1,275.61 acres of this grant were taken for the soldiers' home at Columbia Falls.
[4] Used as agricultural experiment stations; income is not derived from these lands.

The grant of section 16 and 36 in each township for public schools is the largest single grant. Where these sections were reserved, appropriated, or non-existent because of fractional townships, the enabling act provided for the selection of indemnity or lieu sections. Lands comprising the other major grants were undesignated and had to be chosen from the unreserved, unappropriated public domain.

46,080 acres of the university grant were reserved to the territory of Montana in 1881. This grant was reaffirmed by the enabling act. The university also received special grants of 480 acres for an observatory in 1904 and 160.84 acres for a biological station in 1905. To the 90,000 acres for an agricultural college to which Montana was entitled under the Morrill act, the enabling act added 50,000 acres. Special grants of 640 acres in 1891 and 2,000 acres in 1915 are now used as agricultural experiment stations. Finally, the enabling act granted a total of 482,000 acres for normal schools, a school of mines, reform school, deaf and dumb asylum, and capitol buildings.

While each of the grants was made for a specific purpose, Section 11 of the enabling act imposes the following obligation on the administration of all the grants:

> None of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

Article XVII, section 1, of the state constitution reaffirms this special purpose of state lands by stating that they

> . . . shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state. . . .

Perhaps the purpose and nature of state lands have not always been fully appreciated. I. M. Brandjord, commissioner of state lands from 1925 to 1937, noted a widespread misunderstanding of the purpose of the land grants and of the state's obligation in their administration. He observed that the "misunderstanding is far reaching that this is common property, and the sentiment is altogether too prevalent that the state should not be niggardly in the disposition of this common property". He explained that the lands and funds accruing from them are not outright property of the state but rather constitute a trust which it is the duty of the state to administer so as to secure full return to the beneficiaries. He concluded, therefore:

> ***. . . the state does not have the right to be generous in the disposition of any interest in state lands, no matter how good and worthy the cause or the undertaking may be for which the land is wanted. This rule applies to every transaction in which state lands are concerned—to the leasing of state lands for agricultural and grazing purposes, to the leasing for the production of coal, oil and gas and the extraction of other minerals, to the granting of easements for public highways, reservoirs and parks, and for any other purpose; the rule also applies to the sale of state lands and to the investment of the funds. The land grants were made for this one single purpose of obtaining revenues for our public schools and other state institutions.***[1]

[1] Report of the Commissioner of State Lands and Investments, July 1, 1934 to June 30, 1936, p. 8

Section 11 of the enabling act also requires that proceeds from the sale of lands be used to establish permanent investment funds. (The only exception is the public building grant, the proceeds of which are used for construction and maintenance of capitol buildings.) Only interest from investments and income from lease rentals are expended. The enabling act allows a portion of annual interest and income money to be added to the permanent fund. Under this provision the electorate accepted a 1920 constitutional amendment which provided for the addition of 5% of the annual interest and income moneys from the public school grant to the public school permanent fund; the remaining 95% is distributed to schools on a school-age per capita basis.

Income from all sources for all grants for the fiscal years 1956-57 and 1957-58 amounted to $4,504,801 and $4,008,753, respectively. The bulk of this is accounted for by income from the public school grant. Interest and income moneys from this grant are disbursed at the end of each calendar year. The 1956 disbursement of $4,133,541 represented 35.8% of all state money distributed to local schools for the years 1956-57 and 7.1% of total school revenue. The 1957 disbursement of $3,736,329 amounted to 27.6% of state funds and 5.8% of total school revenue.[2]

[2] The figures are taken from the biennial reports of the Commissioner of State Lands and Investments and the Superintendent of Public Instruction.

Chapter II

ADMINISTRATION OF THE DEPARTMENT OF STATE LANDS AND INVESTMENTS

THE BOARD AND THE COMMISSIONER

Montana's federal land grants are administered by the department of state lands and investments. The governing board of the department is the state board of land commissioners, one of seven governing boards created by the state constitution. Article XI, section 4 states that the board, consisting of the governor, superintendent of public instruction, secretary of state, and the attorney general, "shall have the direction, control, leasing and sale of school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law".

The department itself consists of two divisions headed by two chief administrative officers, the commissioner of state lands and investments and the state forester. Both are appointed by the governor with the consent of the senate. The commissioner is the chief executive officer under the board in all matters except those pertaining to state forests. Under the direction of the board, the commissioner has "charge of the selecting, exchange, classification, appraisal, leasing, management, sale and other disposition of the state lands and the investment of the funds arising therefrom or otherwise coming under the administration of the department". The commissioner is also ex officio secretary of the state board of land commissioners and as such keeps the minutes of its proceedings, is custodian of its seal and records and carries out its orders.

The department of state lands and investments was established in 1927 after almost forty years of experimentation with other administrative organizations. The first laws governing state lands were passed in 1891. The legislative assembly apparently expected the board itself to deal with details of administration. It did, however, recognize that the board could not undertake the necessary field work to select undesignated lands and to locate and appraise lands and, consequently, created the office of state land agent to be appointed by the governor by and with the consent of the state board of land commissioners.

The board soon found itself, literally and figuratively, doing a land office business. In its second report the board complained "that the already onerous and increasing duties of the several state officers comprising the board make it an impossibility to properly administer the duties of this board without neglecting others quite as important". They requested the creation of a chief executive officer under the board who would "have charge of all the business of the office, subject to such rules and regulations as the board may adopt". The legislative assembly responded in 1895 with the addition of the office of register of state lands who was to have "general charge" of all lands and to keep the records and seal of the board and receive all moneys. The register was appointed by the governor for a four-year term.

After investigation of the administration of state lands by several commissions appointed by Governor Norris, the legislative assembly in 1909 further defined and clarified offices and procedures with the passage of laws based on the findings of the commissions. The laws supplied the board with four administrative officials: a register, deputy register, state land agent and state forester. All were appointed by the governor with the advice and consent of the senate. The duties of the register were essentially those possessed by the commissioner at present. The state land agent was directly responsible to the board and had as his duties

the selection, location, and appraisal of state lands. His duties were reduced somewhat by the creation of the state forester, who was made the board's chief administrative officer in all matters pertaining to state forest land. The forester was also made secretary of the forestry board under which he was given duties unrelated to state land management.

This administrative organization remained unchanged until 1927 when the department of state lands and investments was established in its present form. The governor retained the appointments of the commissioner and forester with the consent of the senate. By granting to the commissioner the authority to appoint an assistant commissioner, a chief field agent and other subordinates, however, the legislative assembly granted the commissioner a greater measure of independence and initiative than his predecessor.

Since 1891 several methods of appointing administrative officers have been employed: appointment by the governor, by the governor with the consent of the board, and by the governor with the consent of the senate. The commissioner is presently appointed by the governor with the consent of the senate. Thus, the commissioner who is appointed by one member of the board but responsible to the full board may or may not be acceptable to a majority of the body to whom he is responsible. Because the governor appoints the commissioner, board members of the governor's political party might find it inexpedient to make demands of the commissioner or to criticize his administration. On the other hand, criticism by board members of another party might be interpreted as partisan in intent. This situation was commented on in the supreme court case of State v. Page:

> ***The Attorney General asks us to consider the general purposes of the law in providing for the confirmation of the State Land Agent by the State Land Board, and argues that that official is subject to the control of the board, and that, if it be the law that the Governor may appoint without the consent of the board, a situation may arise where the board would direct a certain policy to be pursued, and yet be unable to carry out that policy by reason of the refusal of the agent to execute the orders of the board.***[1]

However, even if the governor's appointment were to be approved by the board, the commissioner would still be "the Governor's man" thrust upon a possibly unwilling board.

Throughout all the changes made in administrative organization, the board of land commissioners, of course, has remained the principal policy-making agency. The history of legislation as outlined above indicates a recognition of the fact that the board itself cannot handle adequately the details of administration. In this regard the board's role has undergone vast change since it first began to function in 1891. However, much confusion remains as to whether initiative lies with the commissioner or with the board on many matters.

What should the board's role be? Authorities on government have frequently commented on the inadequacy of governing boards as administrative agencies. One widely used textbook on state government notes that boards "tend to be irresponsible, to lack initiative, to be unreasonably slow in handling of routine business . . .". The author finds ex officio boards especially unsatisfactory: "Ex officio boards whose members are often elected are especially objectionable from an administrative point of view when vested with power, since it is virtually impossible to establish responsibility".[2]

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[1] 20 Mont. 238, p. 247.

[2] W. Brooke Graves, *American State Government*, 4th ed., p. 385.

Persuasive arguments can be made for replacement of government by boards and commissions with a single, responsible executive. However, boards can fulfill capacities where a single administrative head might prove inadequate. The 1941 Montana Legislative Assembly's Joint Committee on State Governmental Organization made this observation:

> ***A system of Government composed largely of boards and commissions is a decided weakness in the present administrative set up for the state. Boards and commissions are advisable when determining policies and considering questions requiring deliberations and discussion. However, for purposes of administration where quick energetic action is desired, a board or commission constitutes the very poorest type of administrative unit.***[3]

The administration of five million acres of land and investments of 40 million dollars is a complex business. No matter how explicitly drawn, statutes cannot cover all eventualities. Situations not foreseen by the legislature are bound to occur; rules and regulations will have to be adopted as such circumstances arise. Moreover, disputes among lessees and grievances against the administration will always be present. In both instances administrative officials and lessees can turn to the board for its judgment. To fulfill these needs adequately, the board should be freed from administrative details and should function primarily as a deliberative, quasi-legislative and judicial agency.

The board presently functions as both a policy making and administrative body. Administrative details consume much time at board meetings. Much of this detail is perfunctorily dealt with. Such things as granting authority to the commissioner to sell land or approval of land sales, bond offerings, right-of-way applications, etc., are approved by the board as quickly as formal procedure will allow. This granting of routine sanction to the commissioner's work has some unwanted effects. It lessens the commissioner's responsibility for his administration without adequately fixing it in the board. Since the board approves of much of his work, even though this approval may be granted in a routine manner, the commissioner can always maintain that the board is responsible for a course of action simply because it adopted his proposal.

The board's administrative efforts are made at the expense of its policy-making role. When presented with questions involving basic policy, the board appears to make decisions without adequate information, or bases its decision on only a vague, undefined policy. Even when requested to do so by the administrative officers, the board does not always provide adequate declaration of policy and administrative officers are left unguided.

In part this confusion over the locus of initiative between the board and the commissioner on administrative matters is the fault of the statutes. To what extent the board is expected to function in an administrative capacity is not at all clear. Statutes pertaining to specific aspects of the management of state lands in some instances require the board to give its attention to matters of detail. On the other hand, the board has latitude in delegating authority but fails to do so even when such delegation would relieve it of matters of detail.

Conclusions and Recommendations

Since the board must ultimately bear responsibility for the manner in which state lands are managed, the Council feels that appointment of the commissioner by one member of the board is unfair to the other members and prevents insurance that board policy will be carried out by its executive officer. While centralization of administrative responsibility in the office of governor is desirable, responsibility, wherever it does lie, must be

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[3] *House Journal* of the Twenty-seventh Legislative Assembly, 1941, p. 400.

accompanied by commensurate authority. Responsibility for state lands reposes in a constitutional board; therefore, the Council recommends that the commissioner be appointed by that board, be responsible to it, and serve at its pleasure. (See Bill I in *Appendix A.*)

The board of land commissioners should confine itself to policy creating and enforcing functions only. The commissioner should be allowed a wide latitude in his administrative duties but should be required to function within the rules set up by the board and within existing statutes. It should be necessary for the commissioner to come before the board to get approval of purely administrative acts only in extremely unusual situations. When the commissioner brings such matters before the board, he should state why the matter is being referred to the board and make a presentation of facts sufficient for the board to exercise judgment.

The Council recommends that the commissioner's authority be increased and that well-defined procedures be established for appeal to the board from decisions of the commissioner. Rules should be established to clearly inform appellants of the procedures of the board in handling appeals. Much of this must be done by board rule; however, the duty of the board to cancel leases is statutory. The Council recommends that this duty be granted to the commissioner with provision for appealing the commissioner's action to the board. Cancellation of leases is further discussed in Chapter III of this report.

The board should define, codify and publish its rules and policies if it is to function effectively. A beginning was made in this direction in 1959 when the board employed a lawyer to codify policy, but the project was never carried to completion. The lack of printed rules and regulations means that policy is often little more than what land office employees recollect was done in the past. For example, the Legislative Council inquired of the commissioner what the board's policy has been when it receives a lease bid on fewer than the total number of sections held under one lease and when this policy had been adopted. The commissioner stated in his letter of reply, "It has been the practice, according to the oldest employees, in point of service in this department, to discourage the making of applications that would tend to break up an established lease unless it is a direct advantage to the state". Thus, continuity and clarity of policy is dependent upon the collective memory of the employees of the land office.

THE FIELD STAFF

No matter how well the state land office is run or how well the laws governing state lands are written, the administration of state agricultural and grazing lands will be no better than the performance of the fieldmen. They must be the eyes of the office and must supply the necessary practical intelligence. It is their judgment which determines whether the lands shall be used for agricultural purposes or grazing purposes, and it is their appraisal of the carrying capacity of grazing lands which is used in determining minimum grazing rentals. Their estimation of the yield of agricultural lands is a keystone to the method of checking crop share rentals. Their decisions therefore, influence the amount of income received from state lands and determine whether or not the land will be put to proper use and good land management principles adhered to.

The duties of the fieldmen can be divided into summer and winter functions. When weather permits they are actually in the field. An ever present field duty is reappraisal of the land. The commissioner tries to have every state section reappraised once every ten years; at present, intervals between reappraisals are running closer to twelve years. The appraisal consists of visiting the lessee, examining the land, and reporting findings to the office on a work sheet on which is recorded information on improvements, land use, water conditions, assessed value of nearby deeded lands, and comments on the general condition of the land.

In addition to this job, the fieldmen devote about two months to crop checking. The fieldmen visit each piece of agricultural land in their territories prior to harvest time and estimate crop yields in a written report to the land office. In addition, the fieldmen visit the agricultural lands of lessees who are known to submit inaccurate reports on crop yield. Other special field duties include the following up of leads on illegal sublease and lease violations, the location of section lines, investigation of requests to break up ground or to seed agricultural lands to grass.

Winter months are spent in the home office and are devoted to recording their field reports. Field reappraisals are supplemented by the study of aerial photos from the SCS and ASC to locate section corners, water breaks, coulees and other relevant topographical peculiarities. The fieldmen transfer their information from reappraisal worksheets to permanent office books and check their estimates of crop yields against the actual crop reports submitted by lessees of agricultural land. If there are inexplicable wide discrepancies between the fieldman's estimate and the actual crop report, the lease file is checked to see if there is any correspondence reporting unusual conditions such as hail or drought. Where there are no explanations for the discrepancies, investigations are conducted.

In addition to technical duties, the fieldmen also have a more subtle role to play. For most lessees the fieldman is the only personal contact with the state land office. Consequently, the fieldmen are something like public relations men for the state board of land commissioners and the land commissioner. The behavior of the fieldmen can engender respect or disrespect for the state land office.

At present the state land office employs four full-time fieldmen and six extra men for two months during harvest time to aid in crop check. The ages of the four permanent fieldmen range from 62 to 67 years. Most of them have had previous experience in land survey and appraisal work. One is a graduate of Montana State College in agriculture. Until mid 1960 three agents received a salary of $375 and the fourth received $325. Fieldmen receive a per diem for each day not spent in their respective field headquarters of Bozeman, White Sulphur Springs, Miles City and Shelby. Salaries are now $400 and $350, respectively.

The fieldmen normally work under the direction of a chief field agent. However, at the time this study was made, the office of chief field agent was vacant and the duties were largely performed by the bond clerk.

Conclusions and Recommendations

No matter how excellent the performance of the fieldmen, lands cannot be properly administered if the fieldmen are insufficient in numbers. At present the size of the territory each covers is so large that it is impossible for them to be thoroughly familiar with all of the state's sections under their jurisdiction. The chart below lists the size of the territory each covers and the area of state lands within that territory. The largest territory consists of 42,157 square miles; the smallest, 27,675 square miles. Each of the territories contains more than 1 million acres of state agricultural and grazing lands. Each contains state lands approximating 2 thousand square miles. Assuming a driving speed average of 40 m.p.h. for a 40-hour week, it would take each of the fieldmen between 42 and 59 weeks, depending on the territory, simply to drive around each piece of state-owned land, if that were possible. This estimate, which does not include the time it would take to drive from one state section to another, is probably conservative. Many state sections are difficult of access and, even in summer time, rains can make roads impassable for hours or even days. Thus, even if reappraisal of the land were the only duty of the fieldmen, the job would be next to impossible.

	Number of Counties	Total Square Miles in Territory	Acres State Land in Territory (Grazing and Agricultural)	Approximate Square Miles of State Land in Territory
No. 1	11	37,018	1,116,316	1,744
No. 2	15	40,019	1,520,713	2,376
No. 3	12	27,675	1,129,062	1,764
No. 4	18	42,157	1,074,340	1,679

The commissioner appoints the chief field agent and deputy field agents. Since the commissioner himself is a political appointee, it is not surprising that political considerations influence the appointments of chief field agent and fieldmen. A new commissioner generally means a turnover in the field staff. This is unfortunate. Fieldmen frequently remain on the job just long enough to become familiar with their territories when political changes bring about their removal.

The work of the fieldmen is important and requires special talents. The Council recommends that minimum statutory requirements of experience and training be established for the position of chief field agent and that, with the commissioner's approval, he be allowed to choose his own deputy field agents. A qualified chief field agent will select qualified deputies. The Council further recommends that the chief field agent be insulated from political considerations by the passage of a law protecting him from removal except for cause. (See Bill I in *Appendix A.*)

If minimum standards for the position of chief field agent are established by law, the salary must be high enough to attract men with these qualifications. The Council recommends that the Legislative Assembly provide an adequate salary appropriation for this position. The Council further recommends that necessary appropriation increases be granted to enlarge the field staff to an adequate number. By making possible a closer protection of the state's interests, such expenditures will pay dividends in the future.

OFFICE PROCEDURES AND PERSONNEL

The commissioner employs sixteen full-time people and six part-time employees for two months of the year; the total monthly payroll is slightly more than $6,300. Administrative costs for the fiscal year 1959 totaled $117,781 and amounted to 2.6% of income for the year.

Besides the specific positions discussed below, the office staff includes a clerk-receptionist, clerk-stenographer, and a bonds and investments clerk. The duties of each are various. The stenographer aids in typing where needed, as does the receptionist. The receptionist at times assists the contracts clerk and the grazing and agricultural lease clerk. The bonds and investments clerk, whose duties are discussed in another chapter, also handles all requests for rights-of-way and has served as acting chief field agent. He also assists others in the office when seasonal work loads are heavy.

The organization of the department and the functions of its various offices were studied in detail and all major employees were interviewed.

The state land office can be divided into several "offices" as follows: cashier, contracts, leasing, bookkeeper, mineral leases, investments, and the field department. Each of these "offices" and the positions in them except investments and the field department is discussed below.

Records

Before the duties of the various personnel are described, the basic records system should be mentioned.

The working records of the land office consist of a control card file, a lease register, and a lease file. The control card file is an index of all state lands. Every section or part of a section the state owns has its own card. The more than 9000 cards are filed by legal description. The cards show the grant, county, AUM carrying capacity appraisal, sales appraisal, and net acreage belonging to the state. Rights-of-way and presence of water are marked on a plat on the card. The card also contains a history of the sections in the form of lease numbers, names of lessees, and dates of the issuance and expiration of the leases.

The lease register, consisting of eight bound ledgers, is an abstract of the lease file. Leases are listed consecutively by lease number. The register lists the lessee's name and address, the legal description of the land, the acreage and classification as to grazing or agriculture, the carrying capacity and crop share, the grant, rentals charged, receipt numbers for rentals paid, and seeding reports.

In addition an upright file is maintained for each lease. Into it are put the lease application, a copy of the lease, correspondence, and seeding and crop reports.

Cashier

This office is headed by the cashier, who is assisted by an assistant cashier, a clerk-typist and recorder who also works, at times, as a filing clerk in the leasing department, and a part-time clerk. The cashier is responsible for the processing of receipts from sales contracts, agricultural and grazing leases, and oil and gas leases.

Payments are first recorded in the register of leases; receipts are then written in triplicate, and assigned a number. Permanent fund key numbers, which are gotten from the lease register, or the contract register, are written on the receipt. Receipts as written are checked against the contract payment slips, crop report, or grazing card to insure that they have been properly copied. Each receipt is recorded in a cash book and the payment broken down by fund. After they are posted in the cash book, receipts are mailed out.

The title "cashier", however, is a misnomer. Besides recording payments and writing receipts, the cashier's office also:

(1) Prepares and mails seeding report forms to lessees,

(2) Posts seeding information in the lease register,

(3) Prepares and mails crop report forms to lessees,

(4) Checks crop reports against seeding reports,

(5) Computes grazing rentals and mails rental notices to lessees,

(6) Prepares and mails out monthly notices of payments due on land purchase contracts,

(7) Checks lease renewals and assigns numbers to new leases.

Leasing

The duties connected with the issuance of leases are largely performed by one employee. Most of the work is seasonal in nature, and during rush periods other employees assist.

The lease clerk is responsible for determining which leases are expiring. Form letters are mailed to all persons who have expressed an interest in leasing the land during the life of the expiring lease. Lease applications are mailed to those answering the form letter and

to the lessee. When several applications to lease a tract of land are received, they are segregated and processed for competitive bidding. When the new lessee has been determined, a lease form is prepared and sent to the lessee with a request for the first year's rental.

Lease renewals vary widely from year to year. In 1960 there were about 1400 lease renewals and in 1959 more than 1100, while in 1958 there were only 198 renewals. The largest number of renewals occurred in 1953 when about 3000 new leases were processed.

The leasing clerk also processes requests for subleases and assignments, and records mortgages of leasehold interests. The fee for processing assignments is $1.00 and $2.50 for issuing a lease. No fee is charged for processing subleases.

Contracts

The contracts clerk is responsible for processing the detailed paper work involved in the sale of land. When a purchaser and the Commissioner have agreed upon an opening bid, the contracts clerk sends the purchaser an application form for purchase of state land. The application includes a statement of the purchaser's opening bid and the signatures of 12 other persons in the county who can qualify as potential purchasers. The application is returned with a fee to defray costs of advertising the sale and the commissioner's expenses in conducting the sale.

Each month outstanding applications for sale of land are brought before the board for approval. After the board grants its approval, the contracts clerk fills out the form for legal advertising and sends it to the county newspaper and notifies any other interested parties that the land is to be sold. She then prepares a sale file for the commissioner. This file includes a county sales sheet on which is shown the classification of each piece of land to be sold in the county and the applicant's initial bid. After the sale, the clerk computes the amount of contract payments, notifies the purchaser of the board's approval and prepares a certificate of purchase. When the contract has been completed the clerk prepares a patent.

The contract clerk also handles all assignments of contracts. A one dollar fee is charged for all assignments. Five dollar fees are charged for the issuance of certificates of purchase and for patents.

Bookkeeper

The bookkeeper maintains a record of unsold lands by grants. Each month she receives journal vouchers from the contracts clerk showing land sold or patents granted. Lands sold are deducted from the proper grant and placed in a certificate of purchase account. Lands for which patents have been granted are removed from the certificate of purchase account.

The bookkeeper receives from the cashier bimonthly statements of income from rentals, royalties, sales and miscellaneous receipts. She also receives from the state treasurer a monthly report of investment income for each of the permanent funds. With these two statements, she prepares a monthly report of income. From the monthly statements, she prepares semiannual, fiscal and calendar year income reports. These reports are used to prepare the commissioner's biennial report, the preparation of which is one of the bookkeeper's duties.

Mineral Leases

A mineral lease clerk administers more than 1,300 oil and gas leases and about twenty-five metalliferous and non-metalliferous mining leases.

Unlike agricultural and grazing leases, the processing of mineral leases and the collection of moneys from them is non-seasonal. Mineral leases are issued at public auction after advertising. The mineral lease clerk collects the initial rental at the sale and sends the money to the cashier, who writes the official receipts and records them in the cash book. The mineral lease clerk fills out lease forms and prepares bonds, which are required for all mineral leases. These are then sent to the lessee for his signature. When the leases have been returned, they are sent to the cashier, who checks them and signs them. The office seal is affixed to the leases and they are signed by the commissioner and the governor. The leases are then returned to the mineral lease clerk, who attaches the official receipt and sends it to the lessee. The mineral lease clerk records the completion of all mineral leases on the land control cards.

Besides processing new leases, the mineral lease clerk collects all rentals and royalties for leases in effect. With the exception of the notation of mineral leases on the control cards, all mineral lease records are kept in the mineral lease clerk's office. The only function she herself does not perform is the posting and writing of official receipts. She receives only incidental typing assistance.

Most grazing and agriculture leases are written only every ten years, and their number remains fairly constant. On the other hand the number of mineral leases is in a constant state of flux. Leases are constantly being dropped and new ones issued. In addition, possibly more than 50% of mineral leases are assigned. This entails extensive clerical work, because for each assignment a new bond must be executed. Finally, the mineral lease clerk handles an average of about eight daily inquiries on the status of sections of state land.

Conclusions and Recommendations

It is not the intent of the Council to make detailed recommendations on office procedure or organization of the department of lands and investments. However, it is believed that some general remarks, plus a few specific suggestions, may be of help to future administrators of the state land office.

RECORDS

The records system of an office charged with the administration of over five million acres of state lands is important. To a large extent the nature of the records dictates procedure and to some degree affects the entire program.

The Nebraska Legislative Council in an early study of the administration of its state lands registered the following complaint about the inadequacy of office records:

> ***One of the most serious difficulties encountered in the preparation of this report arose from the inadequacy of the State's records relating to its land and bond transactions. Frequently, upon requesting some simple item of information which it would seem should be kept as a matter of course by any business, either public or private, we were told either that the information was not available or that, because of the condition of the records, it would require some months to bring the figures up to date or to verify them.***[4]

[4] Nebraska Legislative Council, Report No. 10 (Revised), *The Administration of State School Lands and Public Trust Funds in Nebraska*, 1941, p. 11.

A similar situation exists in Montana. At the commencement of this study, the Council requested certain information on agricultural and grazing leases from the commissioner. Some examples were: (1) Number of acres of state land classified as to agricultural and grazing, (2) Number and acreage of grazing leases by county, (3) Number and acreage of agricultural leases by county, (4) Number and acreage of other types of leases, (5) Number of subleases on state leases, (6) Number of competitive grazing and agricultural leases, and (7) Average AUM rental or crop share on competitive leases. To comply with this request it was necessary for the commissioner to hire a special employee who worked for two months to collect the data from various records.

The Council appreciates the willingness of the commissioner to take the trouble to compile this information, yet it feels that the continuous compilation and interpretation of this basic type of data is an essential duty of the department of state lands and investments. Without such data, an intelligent evaluation of procedures and policy is not possible.

Without fear of contradiction, it is possible to state that the office's records system is antiquated. The device of the lease register has been employed since the very first lease was written in April, 1892. The control card file, so far as can be ascertained, has been in use since the mid-1920's. The absence of any innovations in record keeping in more than a generation is a striking fact which suggests obsolescence. For example, receipts are recorded in a large, heavy cash book. This method of receipt recording precludes the adoption of modern office machines and techniques. The state examiner's report of 1956 to the governor had this to say about the use of a cash book: "During the period covered by this examination there were 14,488 official receipts posted by hand in a costly bound cash book. We are of the opinion the large volume of business handled by this department warrants installation of modern equipment to expedite the posting and accounting of revenues collected. We recommend a posting machine for distribution and a validating machine for verification on official receipts of cash collected." Pen and ink posting is no longer regarded as an adequate method of maintaining financial records.

The lease register is physically unwieldy. It consists of eight heavy, leather bound volumes which each morning must be removed from the vault to the cashier's office and returned to the vault in the evening. The lease register also dictates awkward office procedures. All employees have occasion to refer to it; but to do so, all except the cashier and her assistants have to leave their desks and cross over one or several office rooms. In order to determine what leases are up for renewal, the lease clerk has to read page by page, through all eight volumes and note expiring leases. Similarly, to prepare seeding reports, a clerk must go through each volume of the lease register to find leases with agricultural acreage. The lease register is a clumsy tool and probably should be discarded. This could be done if all information relative to a surface lease, the land, and crops were consolidated and isolated from strictly financial information.

The lease clerk must refer to the lease register, lease file, and control card. If all the information necessary for processing grazing and agricultural leases were also consolidated, the inconvenience of using multiple records would be avoided.

Such information as is necessary could be recorded on an 8½ x 11 inch lease digest form, prepared in multiple copies and filed by name of lessee, expiration date and location. These easily accessible records could become the source of most basic lease information and would also provide valuable control data on expiration dates, land location, etc. A copy of each digest would undoubtedly be of value to the field department.

The lease file could continue to contain crop and seeding reports, correspondence and copy of the lease, as well as a copy of the lease digest and other detailed information. Some thought should be given to devising a method of carrying over information from one lease file to another on the same land. Employees do have occasion to refer to files on

expired leases which have been removed to a basement vault. Such historic information would prove valuable, particularly to the field staff. Perhaps a copy of the lease digest, posted with information as to carrying capacity or land productivity, could be duplicated and placed in the new lease file when a new lease is issued.

By utilizing the information available from office machine vendors and by studying records systems maintained by oil companies and federal agencies, valuable information and ideas on improving the present records system could be acquired.

GENERAL ORGANIZATION

There seems to be no valid reason for the dispersion of duties among the various semi-independent groups working in the department. If compatible functions were grouped together, a personnel savings and greater efficiency and flexibility could be realized. A logical organization of the department would provide for the following divisions:

Cashier—

The cashier should be connected only with the receipt of moneys, the posting of accounts, receipt preparations and maintenance of other strictly financial records.

Such posting and receipt preparation can be accomplished simultaneously on modern bookkeeping machines. Probably the only information necessary to post would be the lease number, amount, nature of remittance, fund and date. A copy of the receipt, along with the crop report or other material sent by the the lessee could be given to the lease records section for processing.

This position would include the duties mentioned above, plus those of the bookkeeper. A full-time or part-time assistant might be needed.

Land and Lease Records—

This division would include, under one head, the miscellaneous non-financial duties presently performed by the cashier, as well as the duties of the leasing and contracts sections.

An example of the type of uncoordinated activity which could be avoided by consolidating these functions was the subject of comment by Griffenhagen:

> The main activities of the department with respect to collections center around the collection of lease rentals and of payments on land sale contracts. The latter type of payee is billed through the medium of addressograph plate files and the former type by means of notices. It would seem that the addressograph equipment might be used to advantage on the collection of lease rentals and that it might also be adopted for use in follow-up notices.[5]

Mineral Leases—

This office presently operates more or less independently of the other sections, as it probably should. While the cashier accounts for the moneys collected from mineral leases, all controls, records and communications are handled by the mineral clerk.

[5] Griffenhagen and Associates, *Department of State Lands and Investments*, Report No. 4, (September, 1941).

Because a general study of the mineral leasing program has not been made, detailed recommendations on the management of this office are not offered. It seems obvious, however, that the present clerk, who through years of experience has acquired a formidable and practically exclusive knowledge of the state's mineral leasing program, should be given an assistant. Someone must be ready to assume these duties when the incumbant retires.

Some thought might be given to providing this department with a field man who is qualified to conduct field investigations and assist in the enforcement of development and conservation provisions of leases. An informal arrangement with the oil and gas conservation commission now exists; however, with a biennial income from mineral properties in excess of three million dollars, the state has important interests to guard.

In addition to these divisions would be the field staff and investments.

Chapter III

CONSERVATION OF STATE LANDS

SALE OF STATE LANDS

The acreage remaining in each of the federal land grants is shown in the table below. Montana is indeed fortunate to have conserved so large a part of its public lands. Only eight states, including Montana, have retained the major portion of their common school land grants; seven others have retained from a fourth to a half. In some states lands were sold early in the history of the states when land values were low; present revenue is, consequently, less than it might have been.[1]

LANDS REMAINING IN EACH GRANT*

GRANT	ACREAGE
Public Schools	4,620,808.26
Montana State College	105,244.17
Montana State University	18,229.79
School of Mines	61,148.13
Normal Schools	70,255.72
Reform School	69,745.88
Deaf and Dumb Asylum	36,375.63
Capitol Buildings	188,152.46
Militia Camp	640.00
Agricultural and Normal Training School	200.00
TOTAL	5,170,800.04

*The figures are from the office of the commissioner of state lands and investments. The acreage remaining is as of June 30, 1960.

Land Sale Policy

Montana's retention of most of her land grants is the result of a combination of circumstances and design. Until passage of an amendment to the enabling act in 1933, reducing the minimum sales price of grazing land to $5.00 an acre, the minimum price for all land was $10.00 an acre. This deterred land sales. The first board of land commissioners approved of this brake on land sales. The board observed that it could make no better investment than the lands themselves, a point of view possibly reinforced by an awareness of the unhappy results of early, wholesale land sales by older states.

The records reveal that early administrators of our state lands were not always in agreement that the lands not be sold. In its second annual report, the state board of land commissioners in 1892 announced that it was their purpose to lease, rather than to sell, state lands. In 1900, Register H. D. Moore in his biennial report emphatically reaffirmed this policy. However, in 1902, Moore's successor, Thomas D. Long, stated in his report that he favored the policy of selling state land.

[1] United States Department of Agriculture, *Land, The Yearbook of Agriculture*, 1958, p. 73-74.

Early in his career as commissioner of state lands and investments, I. M. Brandjord stated that "The federal land grants for the support of schools and the management of these lands and of the funds arising from their use and sale, . . . constitute a very considerable experiment in government ownership and management of property".[2] By 1930, however, rental rates, which in his estimation were inadequate, and the difficulties of administering the state's scattered lands with a field force which "has never been sufficient in number on account of lack of appropriations" apparently caused the commissioner to conclude that the state had failed in that experiment. He recommended that agricultural and grazing land be sold:

> ***The lands must be sold and brought into private ownership in order to bring forth the best results in management and crop production; only by being brought into private ownership will the lands contribute their proper share toward the development of the community in which they are located. The income realized from the sales price will in nearly all cases far exceed the rentals, and the cost of administration is a great deal lower. It is believed, therefore, that the policy followed by the State Board of Land Commissioners during the last six years of conducting land sales whenever reasonable demand develops, is a sound policy which should be continued.***[3]

In his next report Brandjord listed as one of his objectives "placing the lands of the state except timber and mineral lands in private ownership as rapidly as demand arises", but during the depression years little land was sold.

The policy of the present land board is apparently not to sell agricultural land, although there have been deviations from this policy. Grazing land is sold on request if the sales price when invested at prevailing interest rates for federal securities will return not less than two times the annual rental income. When asked for a statement of their policy on the sale of land, the board instructed the commissioner to search the records for a policy declaration. On November 26, 1958, the commissioner responded to the request as follows: "I have made a search of the records from 1950 to date and I find no such written policy. It, no doubt, was not considered necessary because the Land Board considers each individual application separately and, if it deems that it is to the best interests of the state to sell it at the offered price, it will authorize the Commissioner to sell it. If it does not deem it to the best interests of the State to sell it, the Board will reject it. After the sale has been conducted the result of the sale is presented to the Board and each individual sale is approved or disapproved. No sale is made until the application is approved by the Board and no sale is final until its approval by the Board."

The board's reluctance to sell agricultural land goes back at least sixteen years. At its meeting of October 2, 1944, the state board of land commissioners, on the motion of Attorney General R. V. Bottomly, unanimously agreed that agricultural land under lease not be recommended for sale. This policy of not selling agricultural land has not been consistently adhered to. In the report of the commissioner for the biennium July 1, 1950 to June 30, 1952, the following observation on the sale of land was made: "Before the State Board of Land Commissioners will authorize the sale of any tract careful consideration is given to the future investment of the amount received as to what interest income might be anticipated from the investment thereof. The price per acre must be high enough so that the total purchase price invested at a reasonable rate of interest will produce more than the grazing rental. This is also true as to agricultural lands. *No application for the purchase of agricultural land will be considered by the Land Board unless it is accompanied by an initial*

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[2] *Report of the Register of State Lands for the fiscal years 1924-1926*, p. 15.

[3] *Report of the Commissioner of State Lands and Investments, July 1, 1928 to June 30, 1930*, p. 30-31, 37.

bid per acre sufficiently high to insure that the amount received from the sale invested at a fair rate of interest will produce an annual income in excess of the average annual agricultural income taken over a period of five years."[4]

At its meeting of January 14, 1959, the board made "an exception to the policy of not selling agricultural land" when it authorized the sale of a section of agricultural land in Richland county. The exception was made because the lessee had constructed buildings, a well and REA improvements on the land. At the Board's meeting of July 8, 1959, the board approved the sale of a half section, which included 77 acres of cultivated crop land. Again, the consideration was the fact that the lessee had $20,000 worth of improvements on the land.

Land Sale Procedure

Section 11 of the enabling act states that all lands shall be "disposed of" only at public sale after advertising. This same section establishes minimum sales prices of $10 an acre for tillable land and $5 an acre for grazing land. Article 17, section 2, of the constitution states that grazing land, timber land, and agricultural land may be sold "under such rules and regulations as may be prescribed by law." This section adds the further limitation that land within town or city limits, or within three miles of town or city limits, "shall be sold in alternate lots of not more than five acres each."

The statutes prohibit the sale of timber land and lands likely to contain valuable mineral deposits. Minerals not reserved by the United States are reserved to the state when lands are sold. Section 81-903, RCM 1947, also reserves from sale: (1) all state lands bordering on navigable lakes, (2) state lands bordering on such non-navigable meandered lakes as the board deems valuable for summer resorts, and (3) a strip the width of a 40-acre tract from all state lands bordering on navigable streams.

A purchaser of state land must be 21 years of age and a citizen of the United States, or one who has declared his intention of becoming a citizen. Corporations organized under the laws of Montana may also purchase land. No one is allowed to purchase more than one section of state land, and the section may not include more than 160 acres susceptible to irrigation.

The state board of land commissioners has full authority to decide when to hold sales of land and, with the noted exceptions, what lands to sell, although section 81-907 states that "As a general rule no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least twelve families".

State lands are sold only at public auction at the county courthouse of the county in which the lands are situated. The land is advertised for sale in the county newspaper for four consecutive weeks before the sale. The lessee of any land put up for sale has a preference right to purchase the land by matching the highest bid. All sales are subject to the approval of the state board of land commissioners, and no sale is complete until after it has received the board's approval.

When the commissioner has received a request for a sale, he secures authorization to sell the land from the board. In doing this the commissioner presents the board with the name of the potential purchaser, a legal description of the land, the previous year's rental income, the appraised value of the land, and the annual investment income which could be realized if the land were sold at the appraised value and the money invested. Any peculiarities of the land that might affect the question of whether or not it should be sold, such as

[4] *Report of the Commissioner of State Lands and Investments, July 1, 1950 to June 30, 1952,* p. 10.

the growth prospects of the area, the quality and location of the land, are seldom discussed. After the commissioner has held the sale he requests approval from the board, which the board grants perfunctorily.

The quantity of acreage patented to individuals has never been compiled from the patent books, and is therefore unknown. But more land has actually been sold than is revealed by the present size of the grants, because the state has gained acreage through mortgage foreclosures and exchange of land. In 1917 the legislative assembly provided for the investment of permanent fund moneys in farm mortgages. Because of the agricultural depression following World War I, many of these loans became delinquent and the state was forced to foreclose, thereby acquiring title to additional acreage. Losses of permanent fund principal and interest were gradually recovered under a plan adopted by the legislature in 1935. By December, 1952, the losses had been fully recovered, and by legislative enactment the remainder of 340,979.41 acres of mortgage lands was transferred to the common school grant in 1953.

In 1953 the legislature also authorized the commissioner to exchange 9,353.85 acres of state land within Glacier Park which were producing no income for 168,371.78 acres outside the park. This exchange with the federal government was completed in 1959 and resulted in a net gain of 159,017.93 acres which were credited to several grants as shown in the table below.

GLACIER PARK LAND EXCHANGE WITH U. S. GOVERNMENT

	Acres to U. S.	Acres from U. S.
Public Schools	3,046.98	38,688.08
Public Buildings	3,482.61	81,315.94
Reform School	1,108.66	35,991.64
Normal Schools	640.00	7,755.42
School of Mines	320.00	1,720.46
Montana State College	755.60	2,400.24
TOTALS	9,353.85	168,371.78

In recent years state lands have not been sold rapidly. The table below shows the acres sold since 1945. From June 30, 1945 to June 30, 1960 a total of 378,337.49 acres of state land had been sold. This amounts to an average of 23,646.09 per year. If this rate of sale were continued it would take more than 218 years to sell the remaining 5,170,800 acres of state land.

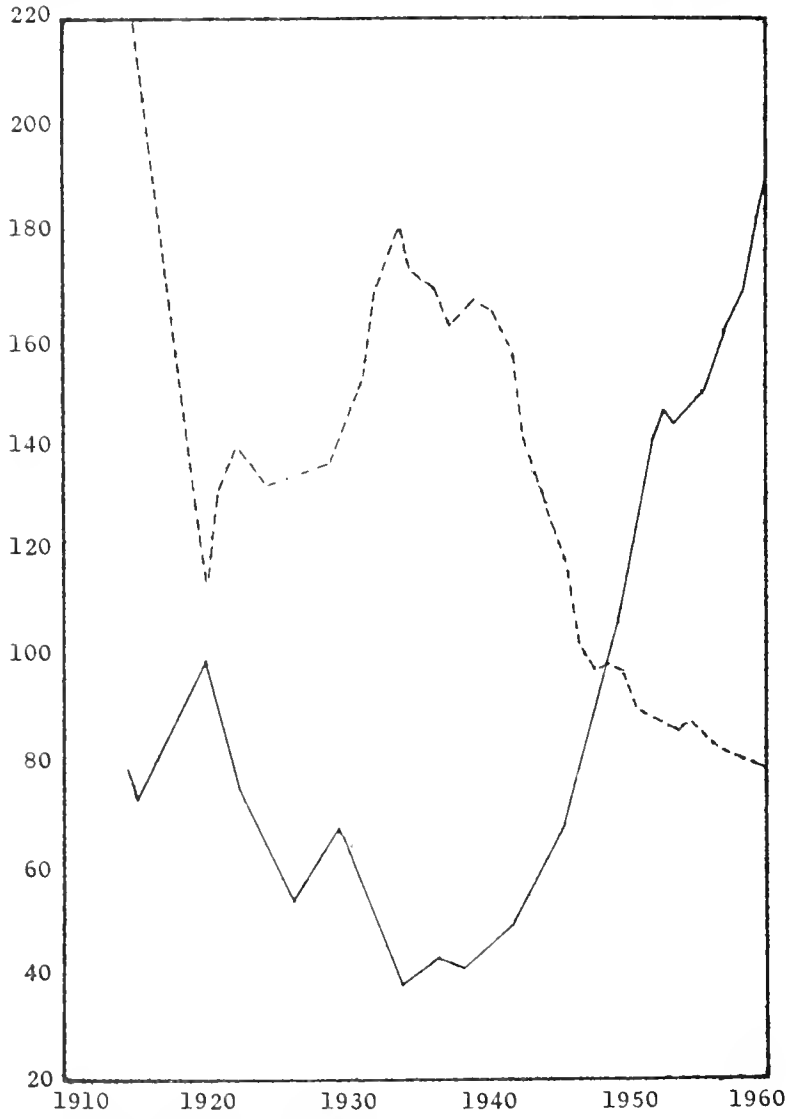
SUMMARY OF ACREAGE SOLD BY YEAR ENDING JUNE 30

1945	2,526.08	1953	25,821.42
1946	15,037.21	1954	20,330.46
1947	16,137.97	1955	25,068.74
1948	22,048.80	1956	17,686.92
1949	32,485.37	1957	10,813.71
1950	41,687.98	1958	15,066.59
1951	45,378.82	1959	10,492.66
1952	37,437.79	1960	40,316.97

Recommendation

Assuming that adequate rentals for state lands will be established and that it will be possible to secure sufficient field supervision, the Council believes that the lands themselves represent the best type of investment. The graph below demonstrates that in times of inflation increases in land values keep abreast of declines in the value of the dollar.

Dollar Values and Farm Real Estate Values in Montana



Key: ——— Land value index, 1947-49=100

------ Dollar, 1947-49=$1.00

Sources:

Dollar values are based on the consumer price index published by the U. S. Dept. of Commerce. The index of farm real estate values is from *Current Developments in the Farm Real Estate Market,* Feb. 1960, Agricultural Research Service, U. S. Dept. of Agriculture.

It is especially significant that investments of the proceeds from sale of the land are limited to municipal general obligation bonds and United States government securities which will reflect dollar devaluation through inflation. While there is no certainty that land values will continue to increase or that future decreases will not occur, the fact remains that

with an ever-increasing population the lands represent a secure asset which enables the state's trust funds to benefit by a capital gain commensurate with the growth of the economy.

The Legislative Council recommends, therefore, that the sale of state lands not be promoted and that limited quantities continue to be sold only when necessary. The Council does not feel that it can recommend that no land should be sold. Each sale request should be considered on its own merits and no sale should be approved by the board until it has carefully scrutinized the transaction. Peculiar conditions may warrant sale of individual tracts. Moreover, it may be to the state's advantage to sell small, isolated tracts, which are difficult and costly to administer in proportion to their worth. The Council especially recommends that grazing land with marginal agricultural potential not be sold if there is likelihood that sale will mean the land will be broken. (See Bill II in *Appendix A.*)

CONSERVATION OF LAND RESOURCES

The acreage of Montana's land grant heritage has been preserved. But are the land resources being preserved? Several measures designed to encourage lessees to observe good land use practices have been adopted. In the late 1930's a 50-50 summer fallow program was adopted for state agricultural land. The commissioner stated that the program has "proven sound practice for the farmer, increased assurance of annual return to both the farmer and the school fund, and fitted the pattern of rehabilitation and stabilization of land and land use".[5]

Statutory Provisions Relating to Conservation

Lessees have been encouraged to conserve land resources by statutes which grant a considerable degree of security of tenure and protect the lessee's investment in land improvements. In 1939 the legislature accepted a Congressional amendment of the enabling act changing the maximum lease term from five to ten years for grazing and agricultural purposes. This was an important innovation. Commissioner Sherlock explained that the object of a longer lease term was conservation through stabilization of land use. Later she was able to report that the new lease term had met with universal approval and claimed that the state was deriving benefits from resulting increased water development, fencing, and rehabilitation and conservation of range land. She concluded, "The long time lease is proving definitely to be a dependable and stabilizing factor to both the farming and grazing industries".[6]

In addition, lessees faced with competitive bids have a preference right to renew leases by matching the highest bid. A lessee whose land is put up for sale has a similar preference right to buy the land.

The statutes also provide for reimbursement for improvements in the event a lessee loses his interest in the land, either through sale or to another lessee. New leases and certificates of purchase are not issued until it is established that the former lessee has been compensated for any improvements.

However, at its meeting of July 30, 1954, the commissioner called the board's attention to the fact that improvements of excessively high value, particularly dwellings, were being placed on state lands. The board moved that lessees be advised that only a "reasonable amount of improvements" be placed on state lands. While provisions for the construction of improvements and for reimbursement for them are undoubtedly consistent with and necessary for proper land use, the presence of costly and extensive improvements unrelated to

[5] *Report of the Commissioner of State Lands and Investments, July 1, 1938 to June 30, 1940,* p. 12.
[6] *Report of the Commissioner of State Lands and Investments, July 1, 1938 to June 30, 1940,* p. 12.

land use have some undesirable results. The construction of residential dwellings on state lands stifles competition for lease or sale of the land and, as was noted above, causes the board to deviate from its declared policy of not selling agricultural land.

Recommendation

The provisions for construction of improvements necessary for proper use of the land and for protection of lessees' investments in such improvements should be retained. However, improvements not related to land use should not be permitted. 81-421, RCM, states that lessees shall have the right to place a "reasonable amount of improvements" consisting of "fences, cultivation and improvement of the land itself, irrigation ditches, houses, sheds, wells, and reservoirs" on state lands. Bill III in *Appendix A* amends this section by eliminating residential dwellings from allowable classes of improvements.

Lease Cancellations

Agriculture and grazing leases are issued on the condition that lessees observe "the ordinary rules" of good land management. Failure to do so constitutes grounds for cancellation of the lease. Although not unknown, lease cancellations on these grounds are not numerous. It is not at all clear that the present system of cancelling leases for poor land management, or for other lease violations, is adequate.

In the first place, the procedure is time consuming. Usually three steps are involved and are spread out over three different land board meetings. First, the commissioner brings to the Board's attention the possibility of a lease violation, whereupon the Board authorizes the commissioner to have a field man investigate the case. At the next board meeting the results of the investigation are presented to the board. If the board decides there are sufficient grounds for cancellation of the lease, they direct the commissioner to inform the lessee to appear before the Board at its next meeting to show cause why the lease should not be cancelled. Meanwhile, the lessee has been held in a position of indecision for three months. In the case of agricultural leases in particular, this could disrupt the lessee's operation by holding up planting until too late a date.

Field agents know of many more lease violations than they report to the board. They attempt to deal with them by telling the lessee to desist and by warning him that future violations will be brought to the board's attention. Field agents are reluctant to bring lease violations before the board. They believe that the board's decisions on lease violations, as often as not, are based on political considerations. They feel the board's reluctance to cancel leases for violations weakens their position.

Recommendation

The lease is a written contract which by its own provision is subject to cancellation for violation of its terms. No board action should be necessary except on appeals. The commissioner should have express authority to cancel leases for violations without first obtaining the board's permission. Were this authority granted to the commissioner, several desirable results might be achieved. The process of cancellation would be expedited rather than protracted over a two or three month period. The decision would be made by those most thoroughly familiar with the facts. It might also have the more subtle result of enhancing the authority and stature of the deputy field agents. Finally, it would reverse the present location of initiative. Under the present system, the commissioner must show why the lease should be cancelled. Giving the commissioner the power to cancel leases would make it necessary for the lessee to demonstrate to the board why the lease should not be cancelled. Possibly this would reduce the number of such cases before the board because a lessee whose lease was justly cancelled would probably be unwilling to appeal to the board. Remedial legislation may be found in Bill III in *Appendix A*.

Absence of Positive Conservation Measures

The provisions discussed above seek to conserve land resources by encouraging lessees to abide by good land management practices. Positive conservation programs which the department itself might undertake are hampered by the distribution of state lands. More often than not, state sections are not contiguous; some state lands are included within the boundaries of each of the fifty-six counties. The scattered location would make an extensive, detailed conservation program expensive to administer. Because of its size the field staff is kept busy with crop checking and carrying capacity reappraisals. (The field staff is discussed in Chapter II.) However, it is apparent that more conservation work could be done within these limitations and without great expenditures.

Article XVII, Section 1, of the Constitution and 81-302 require all state lands to be placed in one of four classes: grazing lands, timber lands, agricultural lands and lands within towns or cities or within three miles of city or town limits. 81-302 requires that agricultural lands be further classified as irrigable or non-irrigable. The purpose of classification of lands in this manner is to assure their proper use and, in the event of sale, to assure that they are sold under their proper classification.

The land office's land control cards show the class of each section and permanent field record books indicate the class by forty-acre tracts. Lands formerly classed as grazing lands have been reclassified as timber lands, which put them under the state forester's jurisdiction. That all the lands have been adequately classified is open to some question—the classification may indicate more about present use of the lands than their use capability. In some cases, the proper class is not indicated. Records for lands within three miles of a town do not always indicate that they are fourth class lands, although a check is made before land is sold to determine whether or not it is fourth class land. The records also fail to indicate whether or not agricultural lands are susceptible of irrigation.

Land can also be classified on the basis of productivity—agricultural land in terms of crop yield and grazing land in terms of forage cover. Individual field men carry histories of crop yields for their own use, but they are not compiled in the Land Office, nor do they form a part of the lease file or land records. Consequently, it is impossible to compare the productivity of state lands as a group with other lands. Similarly, no effort is made to compile data on the carrying capacity of state grazing land. It is, therefore, impossible to tell what quantity of state grazing lands are producing forage commensurate with their inherent capacities.

The office also fails to make systematic use of land data compiled by other agencies. For example, the Bureau of Land Management has made carrying capacity appraisals which include state lands. The land office does not have these on hand. In some cases, lessees' operations are involved in S.C.S. and A.S.C. programs. Where this is the case, the office has failed to secure from these agencies data which the fieldmen could use to supplement their own work.

Recommendation

The Council recommends that where lessees have had farm or ranch conservation programs prepared through the S.C.S. and their soil conservation districts, the land office secure and use all data on state land involved.

A necessary element of a land management program is knowledge of the trend of the land—whether the land is improving, deteriorating, or holding its own. Basic to this knowledge are records which will reveal not only the present condition of the land but also its history. It is impossible to secure such histories from the field department's records. Information from reappraisals of land sales value, carrying capacity, and general condition is recorded on field work sheets and later in permanent field record books. Until recently

new field appraisal data were used to supercede old data and the old pages from the field record books were removed and discarded, thus destroying an invaluable source of land information. At present, new field reappraisal data is superimposed on the old permanent records by means of penciled corrections and references to field work sheets resulting in a bewildering multiplicity of marks and notations. Only present carrying capacities are carried on land control cards; superceded data are erased or blotted out.

The failure of the department to achieve more in the way of conservation is due to the absence of a long-range policy of conservative land use. What conservation measures are undertaken is a function of the initiative of the individual field men, who sometimes advise lessees and urge those with serious problems to consult their county extension agent, A.S.C. or S.C.S. These efforts are uncoordinated and unsupervised.

Chapter IV

AGRICULTURAL AND GRAZING LEASES

In 1959 lessees of state land held more than 8000 grazing and agricultural leases covering almost five million acres of land. The table below reveals that public schools and other beneficiaries of federal land grants receive more income from grazing and crops than from either oil and gas or investment income, the two other major income sources.

	Interest Income	Oil & Gas Leases*	Agricultural and Grazing Leases**
7-1-56—6-30-57	$1,288,071.02	$1,329,587.28	$1,880,620.30
7-1-57—6-30-58	1,322,247.30	765,167.67	1,915,784.72
Total for Biennium	$2,610,318.32	$2,094,754.95	$3,796,405.02

*Includes income from rentals, penalties, bonuses and royalties.
**Totals for each year include grazing fees of $13,388 in 1956 and $15,510 in 1957 collected by the state forester.

The table below demonstrates that agricultural leases produce most of the income from surface leases.

	Total Acreage	Total Income	Average Per Acre Income
YEAR ENDING 6-30-58			
Agriculture	479,512.98	$1,515,458.73	$ 3.16
Grazing	4,108,382.28	384,816.17	.094
YEAR ENDING 6-30-59			
Agriculture	466,459.81	$1,691,997.72	$ 3.63
Grazing	4,272,929.72	437,895.52	.102
YEAR ENDING 6-30-60			
Agriculture	487,381.73	$1,426,998.88	$ 2.93
Grazing	4,212,758.36	737,544.65	.175

For the year ending June 30, 1960 grazing income represented 34.1% of income from surface leases and 89.6% of the acreage. Agricultural income accounted for 65.9% of income and 10.4% of the acreage.

Non-competitive rentals for agricultural land are determined on a crop share basis. Non-competitive rentals for grazing land are derived by means of a grazing fee formula which yields varying rentals, depending on the market price of beef and the carrying capacity of the land. In 1959 only 283 of 8,075 leases, or 3.5% of all leases, were let on competitive bids. Therefore, the methods of arriving at minimum rentals are the key to adequate income from the lands.

AGRICULTURAL LEASE RENTALS

Present methods of determining minimum rentals for agricultural and grazing leases were adopted after more than a half century's experience with other methods. Leasing was originally an adjunct to the sale of land. At the close of land sales leases for unsold lands were auctioned off with a minimum annual rental of 5% of the appraised value of the land. Land offered for sale and lease at public auction and not disposed of could be sold or leased through written application. However, the state board of land commissioners in its report of 1892 stated that it preferred to lease rather than sell lands. Since leasing proved to be more than a temporary expedient, leasing at public auction gradually fell into disuse and was replaced by leasing through written application. Rentals were still determined as a percentage of land value; agricultural land was leased at 5% of its appraised value and grazing land at 6¼% of its value.

When the laws governing the administration of state lands were extensively revised in 1927, a provision for crop share rentals was included. The law authorized the board of land commissioners to lease agricultural lands on a crop share basis at its discretion. The share was to be no less than what private landlords commonly receive. An absolute minimum of 1/5 of the crop was established.

During the depression of the 1930's lessees turned to the device of crop share in preference to cash rentals. In 1932 there were 640 crop share leases in effect. By 1936 this number had almost doubled.

In its report of November 14, 1944 the State Lands Survey Committee, established by the legislature in 1943 to study the administration of state lands, recommended that all agricultural lands, except where it was not in the state's best interest, be leased for a share of the crop on the following basis: "The crop share to be that prevailing in the immediate vicinity of the tract, but not less than one-fifth of the crop." With this report before it, the legislature in 1945 provided for the lease of agricultural lands only upon a crop share basis. The minimum share was set at 1/5 of the crop or the prevailing landlord's share in any district when in excess of 1/5. In 1949 the legislature brought agricultural land rentals to their present level by increasing the share to ¼ "of the annual crops . . . or the usual landlord's share prevailing in the district, whichever is greater."

From the lessee's point of view a crop share has several advantages over a cash rental. The lessee need not pay cash in advance. The crop share is also a flexible rental. The lessee is not held to a fixed cash rental, and the state as landlord shares the risk of crop failure or reduced yield. With a crop share rental system the state's income from its agricultural lands fluctuates with the fortunes of the industry just as its returns from grazing land vary with the price of beef.

However, from the landlord's point of view the crop share system has some disadvantages. The landlord's return is a result not only of soil fertility and weather conditions but also of the tenant's ability as a farmer. If the tenant is a poor farmer, the landlord's return from the land is reduced proportionately. How crop yields on state lands compare with average yields on other lands is impossible to determine because the land office has never compiled complete data on average yields and prices received either by county or on a statewide basis for the various crops raised on state lands. Neither has it determined the acreage seeded to each of the different crops. Thus, the state as landlord does not know exactly how its acreage is being used or how well or how poorly its tenants are performing.

Per acre income from state agricultural lands from crop share leases and for cash leases until the last of these expired, are shown in the table on the following page. While income from crop share leases is influenced by prices, weather and other natural conditions, the general increase in income probably reflects more rigorous enforcement measures. The big

increase in 1940 over 1938 coincides with the adoption of seeding and crop reports. Since then lessees have been required to fill out annual report forms sent out by the land office; after harvest a crop yield report form must also be completed. These reports are supplemented by field crop checks.

	Income Per Acre—Cash Rental	Income Per Acre—Crop Share
1938	$ .66	$ .09
1940	.64	.44
1942	.61	.98
1944	.62	1.47
1946	.60	1.12
1948	.59	1.61
1950	.60	1.48
1952	.77	2.56
1954	.....	4.58
1956	.....	4.64
1958	.....	3.16
1959	.....	3.63
1960	.....	2.93

In addition to lessee seeding and crop reports, and field crop checks, in 1953 Commissioner Bretzke adopted annual crop yield estimate reports for each agricultural lease. Fieldmen visit each piece of crop land prior to harvest and submit to the land office reports of their estimated yields. These estimates are checked against crop reports submitted by the lessees. Significant and unexplained discrepancies between estimates and reported yields are investigated. Increased income per acre since 1953 may reflect these greater efforts at securing the state's full share. While the state may not be getting exactly its share, there apparently has been a steady improvement in crop reporting.

Only 92 of 2,369 leases which include agricultural acreage were let on competitive bids. Therefore, even perfect enforcement of crop reporting requirements will not result in returning to the state its full share if the minimum crop share is too low. Section 81-402 establishes the minimum as one-fourth of the crop or the "usual landlord's share prevailing in the district, whichever is greater." The state board of land commissioners has totally disregarded this statutory directive. A crop share of one-fourth is charged for all non-competitive agricultural leases despite statements by fieldmen and others that in many districts the prevailing landlord's share exceeds one-fourth. Landlord shares of more than one-fourth generally apply to lands of high average yields and may also reflect the fact that the landlord incurs some of the expense of production or transportation of the crop.

Recommendations

The Council recommends that the state land office compile data on state-owned acreage seeded to each crop and state-wide average yields and prices received. This is basic information which any landlord must have in order to evaluate the quantity and quality of crops his tenants are producing and to determine what degree of success he has achieved in securing his crop share.

The Council also recommends that the state board of land commissioners vigorously apply the statutory minimum rental of the prevailing landlord's share in areas where this exceeds one-fourth of the crop. Where part of the larger shares reflect the landlord's as-

sumption of some expense, the board may have to direct the Commissioner to adjust the state's share accordingly. The board's failure to enforce this minimum rental in the past is inconsistent with the purpose of securing full returns from state lands.

GRAZING LEASE RENTALS

In 1927 the legislature replaced grazing rentals based on a percentage of the appraised value of the land with a classification rental system. Grazing lands were placed in one of four classes according to quality. Lessees paid annual cash rentals which, depending on the classification, ranged from $100 for the best land to $40 for fourth class land. During the depression of the 1930's rentals were reduced and following World War II they were increased several times, but the essential features of the system were retained until 1952 when the grazing fee formula went into effect.

In its report of 1944, the State Lands Survey Committee recommended replacing the classification system by a rental based on the carrying capacity of the land. In 1945 the legislature adopted this proposal as well as the committee's suggestion of a 20c minimum animal-unit-month fee. These changes meant that roughly four million acres of grazing land had to be appraised for their animal-unit-carrying capacity. Meanwhile rentals were charged on the old classification system but with a 20% increase. Before the new system went into effect, the legislature amended it twice. In 1949 the legislature replaced the flat 20c animal-unit-month fee with a flexible formula. In the next session the legislature amended the formula—resulting in lower rentals. By 1952 the land appraisal was completed and the formula system was finally put into operation. Fees derived by the use of the formula as amended in 1951 were charged through 1959. In that year the legislature amended the formula so as to result in higher rentals.

The formula is used to compute an animal-unit-month fee. An "animal-unit" is defined as "one cow, one horse, five sheep or five goats"; and "animal-unit-month", usually abbreviated to AUM, is defined as the "amount of natural feed necessary for the complete subsistence of one cow for a period of one (1) month." The AUM fee which results from use of the formula is multiplied by the appraised AUM carrying capacity of the land to determine a lessee's annual rental. Since the price of beef is one element of the formula, rentals for non-competitive grazing leases frequently vary from year to year.

The use of the formula has resulted in the following AUM fees on state grazing land:

1952 — 40c	1955 — 35c	1958 — 25c
1953 — 43c	1956 — 28c	1959 — 28c
1954 — 42c	1957 — 25c	1960 — 44c*

*The 1959 legislature added a temporary 10c bonus to the animal unit month figure resulting from the formula for the period February 28, 1960 to February 28, 1961. The total fee for this period is 54c.

A Comparison of State, Federal and Private Grazing Rentals

How closely the minimum rental for state grazing land approximates "market value" can be evaluated by a comparison of the state's rental with fees charged by federal agencies and with rentals received by private transactions.

BUREAU OF LAND MANAGEMENT

Through its provisions for the creation of grazing districts, the Taylor Grazing Act passed by congress in 1934 legalized and established controls on the use of much of the unreserved and unappropriated public domain. During the 1930's the federal government also

purchased eleven million acres of submarginal land, most of which was placed in land utilization projects and used primarily for grazing. At present both Taylor grazing lands and land utilization lands are administered by the bureau of land management of the United States department of interior.

Fees charged by the bureau of land management for Taylor grazing lands are not determined by use of a fixed formula. Rentals are figured directly from the average prices of beef and lamb for the previous year at the livestock markets of eleven states as estimated by the Agricultural Marketing Service. An effort is made to include a cross section of markets and of different classes of cattle. In January, 1959, the average price received by growers during 1958 was determined as being $22.90 per hundred weight for cattle and $21.00 for sheep. These two figures were averaged and rounded to $22.00. Thus, for 1959, users of federal range in Taylor grazing districts were charged 22c per AUM. The fee is changed only if the average price received by stockgrowers results in a rental two cents above or two cents below the existing fee. The fee remained at 22c for 1960.

The bureau of land management does use a formula for determining grazing rentals on land utilization lands. This formula maintains the same relationship between the previous year's average market price of cattle in fifteen Western states and the rental to be charged, as existed between a base AUM fee and the average price of cattle during the years 1920 to 1932. The use of this formula resulted in an AUM fee of 59c for 1959 and 60c for 1960.

FOREST SERVICE

The forest service uses a similar formula for its grazing lands. This formula maintains the same ratio between the rental to be charged and the previous year's prices for beef or sheep as existed between a base fee in 1931 and the average price of the respective livestock in the years 1921 to 1930. The *Forest Service Manual* says the average price for livestock received by producers in the eleven western states during the period 1921-1930 was chosen "as fairly reflecting representative and complete price cycles for each industry." The 1931 base AUM fees for cattle and sheep "were derived from a study of the rentals paid to private persons, corporations, states, Indian reservations, and other government agencies for the use of comparable grazing lands. This study covered a period of years and areas sufficiently large to insure fair comparison."

Because base rates used in this formula vary not only among forests but also by range allotments within ranger districts, the forest service charges many different AUM fees. The table below shows the highest and lowest AUM rentals charged during 1959 for National Forest grazing land in Montana.

	Cattle		Sheep & Goats	
FOREST	Low	High	Low	High
Beaverhead National Forest	62c	73c	9.2c	13.2c
Bitterroot National Forest	35c	55c	4.6c	6.9c
Custer National Forest	49c	76c	8.0c	12.0c
Deer Lodge National Forest	66c	73c	13.2c	13.6c
Flathead National Forest	42c	42c	9.8c	9.8c
Gallatin National Forest	52c	69c	9.2c	11.5c
Helena National Forest	62c	83c	10.9c	13.8c
Kaniksu National Forest	52c	52c	6.9c	6.9c
Kootenai National Forest	42c	42c	10.3c	10.3c
Lewis & Clark National Forest	73c	73c	11.5c	11.5c
Lolo National Forest	52c	59c	6.9c	10.3c

The highest rental charged was 83c per AUM in several ranger districts of the Helena National Forest; the lowest was 35c charge in the Darby and Stevensville ranger districts of the Bitterroot National Forest. The fees are one cent higher for 1960 in most districts.

INDIAN LANDS

The bureau of Indian affairs uses two types of contracts on Indian grazing land. The one is a farming and grazing lease; the other a grazing permit. Usual leasehold interests in the land are authorized for a specific period in farming and grazing leases. Lands used for pasture are charged an annual rental on a per acre basis. Rentals range from 10c to $2.00 per acre, depending on forage cover and water.

Grazing permits, generally used for larger areas of range land than those covered by leases, authorize permittees to graze a specific number of livestock for a designated grazing season in accord with range management stipulations. Fees for permit lands are not determined by a fixed formula. Several years ago the bureau of Indian affairs attempted to employ a formula on some reservations, but these efforts were abandoned because it was felt too difficult to develop a formula which would keep grazing fees in line with existing conditions. Minimum rentals are determined by such factors as rates paid for privately owned land, livestock prices, and the recommendations of Indian landowners. The rentals must be acceptable to the Indian landowners and to the bureau; when both agree, the rates are advertised as minimum grazing rentals. Average AUM and per acre fees paid by non-Indian permittees in 1959 are as follows:

	Average Rate Per AUM	Average Rate per Acre
Montana Total	$ .96	$ .32
Blackfeet	1.12	.42
Crow	.81	.23
Flathead	1.01	.12
Fort Belknap	.78	.25
Fort Peck	.78	.27
N. Cheyenne	1.40	.59

RENTALS CHARGED BY PRIVATE LANDOWNERS

The Northern Pacific Railway Company does not use a formula system for tying rentals to beef prices. Rentals on their grazing land, therefore, remain relatively stable. Rentals are charged on a per acre rather than AUM basis. Per acre rentals vary between 8c and 30c, depending on the quality of the range. The company pays taxes on the land.

The Prairie county state cooperative grazing district leases more than 40,000 acres from Northern Pacific under 80 different leases. By using the district's assigned carrying capacity, it is possible to convert the rentals for these leases into AUM's. The lowest rental for the 80 leases is 32c per AUM for a half-section tract; the highest is $2.08 per AUM for a full section. The average for all leases is 80c per AUM.

The Anaconda Company's lumber department at Bonner leases some land on an AUM basis. Their fee averages slightly below two dollars for a 5 month grazing season, or about 40c per AUM. The Anaconda Co. leases other lands on a cash-per-acre basis. Lands which the lessee is allowed to fence and use as he chooses are leased for an annual payment of 12½c an acre. For grazing on the surface of mining claims the Anaconda Company charges about 20c an acre, and meadowlands capable of producing wild hay rent for 50c an acre.

There are some conditions which make it impossible to equate fully the state fee with rentals charged by private individuals. The higher figures for commercial fees may reflect seasonal nutrition value of grasses and the greater demand for range during the high-gain

season. Also, commercial rentals are sometimes based on a cow-calf unit which is generally about a dollar higher than AUM rentals for yearlings. Since the carrying capacity for state land is figured on the basis of mixed cattle—that is the number of head excluding sucking calves—rentals for state lands are not fully comparable with commercial rentals for cow and calf.

Possibly the most significant difference between state leases and private agreements is the absence of landlord services. The fact that the state as a landlord supplies neither salt, fencing, nor management of the herd detracts from the value of a state lease. While customary landlord services vary in different areas of the state, most commercial rentals include some services. Although it is difficult to attach money values to such services even when their nature is known, they must be considered when state and commercial leases are compared.

Officials of the forest service have the authority to collect money for the value of forage consumed by animals grazing in trespass on National Forest lands. In such cases officials may charge commercial grazing rates prevailing for the type of livestock in trespass. Since such rates would in all likelihood be established by persons thoroughly familiar with local conditions, charges in such cases are probably a reliable indication of commercial rates for this type of land. Five of the eleven national forests in the state, in response to a request for such information, either reported no recent cases of trespass or handled the cases by impoundment of the cattle. Trespass rates charged within the last 5 years and rates judged by local forest service officials to be commercial rentals in their areas, whether or not these rates were ever used in trespass cases, are found in the table below. Some of the reports failed to distinguish among the various classes of livestock, but where such distinctions were made, they are included in the table.

FOREST	Trespass Fees Charged in AUM's	Commercial Rates As Reported, In AUM's
Beaverhead National Forest	$3 to $4.50	$2.50 to $5.00
Bitterroot National Forest	.....	$3.00 to $4.50
Custer National Forest	$2.50 for cattle; $4.00 for horses	.....
Deer Lodge National Forest	$2.00 for steers & heifers; $3.50 for cow and calf	$2.00 to $3.50 for steers & heifers; $3.00 to $4.50 for cow & calf; $4.00 to $5.00 for horses
Gallatin National Forest	$3.00 for adult animals	$3.00 for yearlings; $3.50 to $4.00 for cow & calf
Helena National Forest	$2.50*	.....

*Commercial rate as set by the Helena Forest Cattlemen's Advisory Board.

Information from all sections of the state supplied by the Helena office of the Agricultural Marketing Service, U. S. Department of Agriculture, can be used as a check on the more selective commercial rates reported by forest service officials. The table below summarizes information secured from the Helena office on AUM rates for pasturing cattle on privately owned land in 1959.

District[1]	High	Low	Median	Mode	Arithmetic Average
1 (Northwest)	$4.00	$1.00	$2.50	$3.00	$2.45
2 (Northcentral)	4.50	1.50	3.00	3.00	2.70
3 (Northeast)	3.00	.25	2.00	2.00	1.96
4 (Central)	4.00	1.00	3.00	3.00	2.92
5 (Southwest)	5.00	2.50	3.00	3.00	3.28
6 (Southcentral)	4.00	.63	3.00	3.00	2.80
7 (Southeast)	4.00	.25	2.50	2.50	2.38

The figures were obtained from questionnaires sent to farmers and ranchers throughout the state. Those receiving questionnaires were asked to estimate prevailing private grazing rentals in their area. A total of 1000 questionnaires were distributed; of those returned, 214 answered the question on grazing rentals. The lowest response was 24 in the South West district; the high was 35 answers from the North central district with an average of 30 responses for all seven districts. The sample is small, but it has the virtue of distinguishing among different parts of the state.

In most districts the highest and lowest rates show a considerable variance. In such cases either the median or the mode of a series of numbers can be more representative than the arithmetic average. The median is the middle point of a series; that is, half the numbers fall above that figure and half below. The mode is the number which occurs most often. In six of the seven districts the mode and median coincide.

Securing Market Value for State Grazing Lands

Article XVIII, Section 1, of the state constitution, as interpreted by the state supreme court, stipulates that public lands are held in trust for the purpose of which they were donated and are, therefore, not to be disposed of unless full market value is received for them. The leasing of state lands is considered "disposition" within this context.

If a truly competitive market situation existed for state grazing land, the fulfillment of this constitutional requirement would be no problem. However, in most instances a competitive market is an impossibility. Because state lands are scattered throughout the state, the market for many sections is limited to a few individuals; and some of the land, although how much is not known, can be used by only one person. In other cases, where a state section might be of value to more than one party, testimony before the Council's subcommittee on state lands indicated that in some instances "being a good neighbor" precludes competitive bidding.

These factors help explain why only 3.5% of grazing leases, covering about 2.4% of all state grazing acreage, in effect in 1959 were let under competitive bid. Since this low level of competition is due, in large part, to conditions inherent in the nature of state lands,

[1] *Northwest* includes Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell and Deer Lodge counties; *Northcentral* includes Glacier, Toole, Liberty, Hill, Blaine, Phillips, Pondera, Teton and Chouteau counties; *Northeast* includes Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland and Dawson counties; *Central* includes Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Broadwater, Meagher, Wheatland, Golden Valley and Musselshell counties; *Southwest* includes Jefferson, Beaverhead, Silver Bow, Madison and Gallatin counties; *Southcentral* includes Park, Sweet Grass, Stillwater, Yellowstone, Treasure, Big Horn and Carbon counties and *Southeast* includes Rosebud, Custer, Prairie, Wibaux, Fallon, Powder River and Carter counties.

most grazing leases will continue to be let at the minimum rental. An examination of the state's minimum grazing fee, therefore, is of utmost importance because the minimum figure will also be the maximum for the vast majority of grazing leases.

To evaluate how closely the minimum rental for state grazing land approximates "market value", fees charged by federal agencies and rentals received in private transactions have been discussed above. The comparison reveals that the state minimum rental for 1959 was below fees charged for Indian land, land utilization land, and below the lowest fees charged by the forest service. Only the Taylor grazing lands rental was less than the charge for state grazing land. The highest fee charged by the forest service was almost three times the state's 1959 fee of 28c, and the lowest fee was 25% higher.

These comparisons are especially significant because, with the exception of Indian land, the receipt of revenue is not a primary consideration in the administration of these lands as it is with state land. The object of state lands ownership is the greatest possible income consistent with conservative use of the land. For the federal government this goal is subordinate, the production of income being only an incidental end.[2]

The 1960 minimum fee for state land is 54c. This increase over the 1959 figure is the result of beef price increases, the amendment of the formula by the last legislative assembly and the addition for one year of a temporary 10c bonus to the AUM figure produced by the formula. Fifty-four cents compares more favorably with charges made by federal agencies in 1959. It is more than some of the forest service's lower fees, but it is still below the land utilization rental, below the forest service's higher figures, and less than the average for Indian land.

A comparison of the state's minimum fee with commercial rentals shows still more contrast. While it is impossible to arrive at completely unimpeachable figures for private agreements, most commercial rentals probably fall between $2 or $2.50 and $4 per AUM. Thus the state fee for 1960 is about one-fourth what would be considered minimum payment for grazing on private land.

Income from grazing rentals ought to represent a reasonable return on the value of the land. The table on the following page shows income as a per cent of an assumed value of $10 per acre. The highest return of 1.75% occurred in 1960. Prior to 1960 highs of 1½% had been achieved only twice since 1952.

Real returns, however, are probably something less than 1 to 1.75%. Recent sales prices indicate that a $10 per acre valuation is an extremely conservative estimate of the value of state grazing lands. The average sales price of forty-three parcels of state grazing land sold between September, 1958 and mid July, 1960 was $26 an acre for the 18,515 acres sold. The average appraised carrying capacity of these tracts indicate that they are not of superior quality. The state-wide average number of acres required to supply one AUM is 3.62 acres; the lands included in the sample averaged 3.63 acres to an AUM. Had the state retained ownership of these lands, 1960 rentals for these tracts would have represented a return of 0.676% of their sales price.

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[2] "The federal lands produce large revenues to the federal government from the sale of timber, oil royalties, etc.; but maximization of these revenues does not seem an appropriate primary goal in the management of the federal lands. The federal government is a land-owner in a proprietary as well as in a governmental sense; if its interests as a land proprietor were dominant, then it might seek maximum revenue from the products and uses of its land. Even here, as an enlightened landowner, it should seek maximum income over a long period of time rather than on a short-run basis. But the federal government's interest in management of its lands is basically more that of a government concerned with the people's welfare; its interest as a landowner in a proprietary sense should be, and generally has been, subordinated to its general governmental responsibilities." Marion Clawson and Burnell Held, *The Federal Lands: Their Use and Management,* 1957, p. 9-10.

Year	Grazing Acres Leased	Total Grazing Income	Percent Return
1952	3,934,904.97	$537,955.66	1.37%
1953	.....	598,942.86	1.52%
1954	4,211,210.44	620,998.49	1.46%
1955	.....	513,090.11	1.22%
1956	4,170,151.59	434,399.37	1.04%
1957	.....	403,950.91	.97%
1958	4,108,382.28	384,816.17	.94%
1959	4,244,056.79	437,895.52	1.03%
1960	4,212,758.36	737,544.65	1.75%

At the conservative figure of $10 an acre, the purchase price of a section of state grazing land would be $6,400. With 6% interest and a state-wide average property tax of 8c an acre for grazing land, the expense of interest and tax costs would be $435 the first year. A similar calculation based on more realistic land values would show proportionately greater costs. The average state-wide carrying capacity of state land is 172 AUM's per section. Therefore, the rental on the average state section was $48.16 in 1959 and $92.88 in 1960. Thus, it is far cheaper to lease than to buy state grazing land.

Were it not for competitive bidding, income from grazing land in 1958 would have been less than what property tax income would have been if the land were privately owned. While only 3.5% of grazing leases in effect in 1959 were let on competitive bid, income from these leases amounted to about 11% of the total income from grazing land. Had all the lands been leased for the minimum rental, the average per acre income would have been 7.7c, or less than the state wide average tax on grazing land. Eleven of the forty-three sales referred to above were held early enough in the year to have the lands placed on the 1959 tax rolls. The 1959 rental would have been less than the property tax on ten of the eleven parcels. For two of the eleven, 1959 taxes were higher than the income which would have been derived using the 1960 rental of 54c an AUM.

THE VALUE OF STATE GRAZING LEASES

Much is said about the short-coming of state land and of conditions unfavorable to lessees. Comments are often made to the effect that the best land has been sold and the desirable land which remains is leased under competitive bid; that state land is of uneven quality, consisting mostly of isolated sections and is, therefore, of little value; that the lessee pays on the basis of 12 months no matter how long the land is used, and he pays whether feed is present or not; that the land is expected to support game in addition to stock; and that the threat of competitive bid is always present.

These assertions have varying degrees of merit. To be sure, state grazing land is uneven in quality, but since it is spread throughout the whole state it generally consists of equal parts of good and bad land. It is the job of the field agents to determine the forage worth of the land and to assign a lesser carrying capacity to lands of inferior quality.

That all desirable state land is leased under competitive bid is unlikely; because of its location some good land can be leased by only one operator. Most state sections are not contiguous, and in this sense they are "isolated". But "isolated" is a relative term. A section might be isolated from other sections of state land and yet fit neatly with lands owned or leased by an operator to complete a balanced unit. The personal value of a state section is a matter not only of its intrinsic worth but also of how it complements an individual ranch operation. If a parcel of state land is not an essential component of a complete operating

unit, its value to the lessee is less than if, for example, it supplies needed water or augments insufficient summer pasture. Of course, "value" in this sense can only be measured by the individual operator. For the purposes of administering state lands, a more general price must be affixed to the forage which will support one animal-unit for a month.

The lessee's rental is based on a twelve-month period because of the method employed in determining the AUM carrying capacity. The field man estimates the number of units a section would carry for a full year and then multiplies by twelve to get the total AUM's. An AUM, it must be remembered is a measure of forage, not standing room. One AUM for a twelve-month lease would equal 12 AUM's on a one-month lease. The lessee has the advantage of deciding how he will use the forage. The land office makes no attempt to dictate how or when the lessee's stock shall consume the forage.

The conditions of state leases are not unfavorable to the lessee; some are greatly to his advantage. The degree of managerial responsibility retained by the lessee is one factor usually considered in ascertaining the value of a lease. The Forest Service, for example, decides the number and kind of livestock its permittees may graze and the length of the grazing season. It may direct the salting of the animals and retains the right to alter the grazing season and to reduce the allotted number of animals for the protection of the range.

Compared with forest service grazing permits, state leases are very liberal. The land is essentially the lessee's own for the term of the lease. All decisions of range use are left to the lessee, the sole general reservation being that principles of good range management be observed and that the land not be overgrazed. In addition, unlike federal permits, he is presently allowed to post state lands against hunting and fishing. While the state board of land commissioners has not explicitly allowed or disallowed posting, the policy of the land office is to allow it, since the lessee is solely responsible for the care of the land. The state, as does the federal government, reserves the right to sell the land and to grant rights of entry for minerals and other surface rights-of-way.

The lessee is committed to paying a rental whether feed is present or not. However, the field department tries to set the carrying capacity at a conservative level in an effort to average out seasonal variations in quality of grass cover. The lessee has the right to request a reappraisal if he disagrees with the assigned carrying capacity. The policy of the land office has been to honor such requests, and the office would probably be willing to accommodate the lessee if decline of the range is due to natural causes.

To be sure, state land does supply some feed for game animals, but in this respect state land is hardly different from other range. State sections are not game preserves; neither the land office nor the antelope singles them out for special attention.

In several respects lease tenure on state land is more favorable to the lessee than is the case with private land. State lessees have the right of tenure up to ten years. If no other bids are made, the holder of an expiring lease may have it renewed at the minimum rental. While the threat of competition is present as it is for private land, the lessee of state land is in the favored position of having the right to match the highest bid without submitting a bid of his own. If the land is put up for sale, the lessee has a similar preference right to match the highest bid without participating in the bidding. Lessees of state land also have the right to assign their leases. In some instances tenure is so secure lessees have been known to say they "own" a state section.

Another factor in the lessee's favor is his right to compensation for any improvements he has made on the land. Improvements allowed by statute "consist of fences, cultivation and improvements of the land itself, irrigation ditches, houses, sheds, wells and reservoirs, and similar improvement." (R.C.M., 81-421). The addition of substantial improvements can act as a deterrent to competition. This was evident in a case before the state board of land

commissioners on July 8, 1959. A lessee requested that he be allowed to purchase 320 acres which included crop land. Since it has been the policy of the board not to sell agricultural land, they were reluctant to give their approval. However, it was revealed in the course of their discussion that the lessee's house and farm sheds, valued at $20,000, were located on state land. The board decided on a minimum price of $60 an acre. The lessee objected to this minimum, claiming that the price might well be raised still higher through competitive bid. To this one member of the board observed that with $20,000 of improvements he had nothing to fear since no one would bid against him. The land was sold at the minimum price. Other instances of building dwellings on state land as insurance of continued control have been reported and indicate that it may not be uncommon. (A recommendation on permissable improvements will be found in Chapter III of this report.)

SOME EFFECTS OF LOW RENTALS

Low rentals have some effects which this report will not discuss in detail but which ought to be mentioned briefly. Because of the nature of the land office records, it is impossible to estimate the number of lessees of state grazing land or what portion state lands are of their total acreage. We do know that many ranchers do not lease state land, and many others lease only one or two sections. Some ranching operations, however, make use of large portions of state land. In 1959 twenty-three lessees of state land, exclusive of state cooperative grazing districts, controlled over 464,000 acres or 10.9% of all state grazing land. If to these are added the more than 300,000 acres leased by 23 state cooperative grazing districts, 46 lessees controlled 18.5% of the state's grazing land.

Some of the effects of this situation are clear. Low rentals tend to "subsidize" those operators who control large tracts of state land and place operators who make only incidental use of state land or lease no state land in an unfavorable competitive position. The low average land costs experienced by users of large quantities of state land also provides them with a margin of profit which can be used to advantage in competing for the purchase or lease of private land. Furthermore, since non-competitive grazing rentals bring in little more income, if any, above what property taxes would supply, the burden of deeded land to furnish funds for schools and local government is thereby increased. Every dollar which does not come from state lands is a dollar which has to be raised by increased taxes on property.[3]

In the long run, adequate rentals for state grazing land could have salutary effects on the livestock industry. Speculative operations can function successfully only in times of high prices or where land values are such as to admit a wide margin for profit. In reducing this margin, adequate rentals would reduce speculative operations and tend to stabilize the industry.

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[3] Effects of low rentals for public lands are discussed in Mont H. Saunderson, *Western Land and Water Use,* 1950, p. 134-135. While the author refers more specifically to federally administered range, his observations apply to state grazing land as well. Among reasons why he thinks fees for public grazing lands should be near commercial rates, the author includes the following:

> Another good reason for raising public-land grazing fees is the adverse effect, in most public-land communities, of the low fees upon the substantial number of ranches that do not have any public-land grazing. These ranches that do not have the benefit of low-cost public-land grazing find their local taxes influenced upward by the higher capitalization of the private lands of those ranches that do have public-land grazing permits. Beyond this effect, those ranches without the public-land use are at a disadvantage in competing with the subsidized ranches for the leasing of private lands. In other words, those ranches without the public-land permits cannot use them to "average down" total land cost.

In conclusion Mr. Saunderson states "it seems desirable that the grazing use of all public lands be priced at or near the commercial value of that use."

ADVERTISING OF LEASE EXPIRATION DATES

One measure of the market value of state grazing land is the price users are willing to pay on a competitive bid. In 1959 there were approximately 5,700 grazing leases in effect. Of these, 199, or 3.5% of all grazing leases, covering 2.4% of all state grazing acreage, were competitive and yielded an income of $46,501.71, or about 11% of the total income from grazing land. The average income per acre from these leases was about 42c as compared to an average for all grazing land of slightly more than 10c an acre. The state-wide average AUM rental for the 199 competitive leases was $1.49 as compared to the minimums of 28c in 1959 and 54c in 1960. The number of competitive bids and the highest in each county are shown in the table below.

County	No. Comp. Bids	AUM	County	No. Comp. Bids	AUM
Beaverhead	7	$3.42	McCone	4	$2.63
Big Horn	5	1.53	Meagher	....	....
Blaine	1	.83	Mineral	....	....
Broadwater	2	.31	Missoula	1	.75
Carbon	9	6.66	Musselshell	....	....
Carter	10	2.15	Park	4	2.49
Cascade	8	3.00	Petroleum	....	....
Chouteau	10	.40	Phillips	3	1.71
Custer	2	1.25	Pondera	2	3.50
Daniels	9	1.70	Powder River	5	1.77
Dawson	6	1.00	Powell	2	.80
Deer Lodge	1	.77	Prairie	1	2.83
Fallon	2	.78	Ravalli	....	....
Fergus	8	3.87	Richland	7	2.08
Flathead	....	....	Roosevelt	2	1.98
Gallatin	5	4.17	Rosebud	5	2.66
Garfield	3	1.34	Sanders	3	1.20
Glacier	....	....	Sheridan	3	2.70
Golden Valley	5	2.65	Silver Bow	....	....
Granite	....	....	Stillwater	6	2.39
Hill	13	2.19	Sweet Grass	4	4.44
Jefferson	3	2.90	Teton	9	3.33
Judith Basin	7	3.57	Toole	4	3.51
Lake	....	....	Treasure	....	....
Lewis & Clark	3	1.06	Valley	4	.88
Liberty	1	2.34	Wheatland	3	1.67
Lincoln	....	....	Wibaux	1	1.41
Madison	1	2.77	Yellowstone	4	2.77

Under present law competitive bidding for leases is possible. The statutes and present administrative practices accommodate but do not foster competition. The land office maintains a record of the name of anyone who expresses interest in leasing a particular piece of land; when the lease covering that land expires, known potential lessees are informed of its expiration by letter. This gives them the opportunity to submit written, sealed bids. Under this procedure, a potential user of state land has first to locate state lands and then inquire about them, either by letter or in person. The individual, not the land office, must take the initiative.

This method is subject to abuse, and does not always insure equal opportunity to lease the land. By means of variable lease terms, lessees can dodge competition. (Variable lease terms are discussed in Chapter V of this report.)

Advertisement of lease expirations would bring to the attention of prospective lessees the availability of state land and would probably eliminate avoiding competition by juggling lease terms. It would also stimulate interest in state land. Since income from competitive leases is so much higher than non-competitive leases, it might be a solution to the problem of how to insure an adequate income from the state's grazing acreage.

However, some are fearful that publicity would encourage "spite bidding" among neighbors. They believe that publicity will attract "suitcase ranchers" who, by bidding up leases in times of high prices, will break up operating units and damage a vital industry. Speculative operators who pay more than the land is basically worth supposedly will of necessity over-graze and then drop their leases when prices decline. The old lessee might be unwilling or unable to take up the lease again.

Because advertising would increase their work load, personnel of the land office are opposed to advertising lease expirations. They contend that the number of idly curious would be increased, while they are already pressed during lease renewal season to answer all inquiries. The arrangement of leases by county for advertising would necessitate further clerical help. The land office staff feels that the greater burdens would increase the cost of administration more than would be compensated for by any possible increased income. They believe that where competition is practical, it exists under the present system. They are also convinced that advertising will produce enmities which will spill over onto them.

What would actually follow from advertisement of lease expiration dates is not known, since it has not been tried. Because we do not know what portion of the land is so situated as to make bidding possible, an intelligent guess as to the economic effects cannot be ventured. However, the Council feels that there is some merit to the contentions of those opposed to it and in the absence of more data, does not propose the advertising of all leases.

While the present system may not be completely satisfactory, ranch operators who are really interested in state sections probably know where they lie and are willing to make inquiries. Abuses which result from allowing the lessee to dictate the lease term can be rectified with simple administrative changes. The vast majority of leases will probably always be non-competitive and the largest share of income from state lands will probably continue to come from non-competitive lease. Therefore a fair minimum AUM rental must be the key to an adequate income.

An Evaluation of the Grazing Fee Formula

The grazing fee formula used to ascertain rentals for non-competitive leases is one of the factors which determines the amount of income from state grazing land.

The formula establishes a fixed ratio between average beef cattle prices and average grazing rentals for the base period 1938-1947. The present statute declares the average price of beef cattle during those years to have been 10½c per pound and the average grazing rental 24c per AUM. The formula dictates that the rental charged in any one year must bear the same relationship to the average price of beef for the immediate preceding three years as exists between 24c and 10½c.

For example, the average price of beef cattle for the past three years is 19.45c per pound. Thus, where "X" is the rental for 1960, the equation is as follows:

$$10.5 : 24 = 19.45 : X$$

To determine "X", 19.45 is multiplied by 24, which results in 466.80. This is then divided by 10.5 and results in 44.45. The computed rental for 1960, therefore was 44c aside from the temporary bonus.

Income from state grazing land has increased since the adoption of the formula system; however, the increase ought to be evaluated in terms of historical background. The average per acre income from grazing land since 1928 is shown in the table below. The effects of a 50% rental reduction in 1933 requested by state land lessees are clearly visible. At the time these reductions were made Commissioner I. M. Brandjord, while agreeing that extraordinary economic conditions required drastic measures, expressed concern. He explained that the cut was an emergency measure but that the reduction was not accompanied by a time limitation. His fears were not ill-founded; the rentals remained unchanged until 1945 and were below the 1932 level until 1952.

Year	Income Per Acre	Year	Income Per Acre
1928	12.0c	1946	6.4c
1930	12.0	1948	7.2
1932	10.7	1950	9.0
1934	5.2	1952	13.6
1936	5.4	1954	14.7
1938	5.4	1956	10.4
1940	5.4	1958	9.4
1942	4.3	1959	10.2
1944	5.0	1960	17.5

From 1945 to 1952 grazing rentals were increased several times, resulting in slightly increased income per acre. In 1952, when the formula system went into effect, per acre income from grazing land was finally restored to a level which prevailed prior to 1933. Amendment of the formula by the 1959 legislature resulted in a new high in 1960.

An adequate formula ought to be simple, flexible, and capable of insuring rentals commensurate with the "market value" of the land. As measured by these criteria, the present formula fails totally. It is unnecessarily complex and apparently bewilders even legislators. The present formula is flexible; rentals rise and fall with the price of beef. But whether the formula alone can ever result in adequate rentals is debatable. The ratio of present beef prices to the rental is fixed by the ratio of 24c to $10.50, or a ratio of 1 to 44. An AUM fee of $2 to a price of $20, which is probably typical of present commercial conditions, is a ratio of 1 to 10. Thus, the use of the formula necessarily results in a figure vastly different from going rates. In order for the state to secure a dollar an AUM under the present formula, the three year average price of beef would have to be about 43c.

Base period formulas lend stability to the present relationship of prices to rentals by tying them to averages of rentals and prices for a past cycle of the livestock industry. The effect is to hold rentals down during boom periods and hold them up during bad times.

Base period formulas have the endorsement of use by the state and several federal agencies, but this does not assure the soundness of their use. It may be that they are essentially and inherently unsound. Bad times have existed and may return, but the desirability of reducing present rentals by averaging in the trough of bad times is questionable.

Secondly, even if it were possible to determine accurately what average rentals were during a base period, historic figures would fail to reflect the rapidly changing conditions of the livestock industry. Historic figures may reflect conditions no longer present. In past decades owners of range lands may have been willing to rent them at low rates, but the

time is past when range lands were regarded as waste land. A recent report from Montana State College states that "there is no longer a grass surplus" and that "existing range is now more costly."[4]

If base period formulas in general are open to some question the state formula is especially vulnerable. Once the working of the formula is clear it becomes apparent that the ratio embodied in the formula is a dubious one. The formula purports to establish a ratio of average beef prices to average commercial rentals during the years 1938 through 1947. At best it would be difficult to arrive at a significant and accurate figure for an average rental during those years. The figure first used in the formula is of questionable accuracy and its source unknown. When the formula was first written in 1949, the stated average rental was 23.3c. In 1951 this was reduced to 18c and then raised again in 1959 to 24c. Obviously the average rental during a defined, historic period could not of itself swell or contract twenty years later. This illustration proves that the formula is subject to abuse by the substitution of unreal figures to achieve predetermined results.

By maintaining the appearance of a scientific and precise technique, the existence of the formula tends to conceal tampering. Because the figures employed in the base ratio are arbitrary, the formula is a fiction and the principle upon which the formula should rest is denied.

Recommendation

The present formula should be replaced by a simplified one consisting of a small base fee and multiples of current beef prices. (See Bill III in *Appendix A.*) The base fee can be viewed as representing the static minimum value of the land and would compensate for the absence of property taxes and for the relatively unvarying administrative costs borne by the state.

The formula would have the advantages of simplicity and flexibility. It would work to the advantage of the stockman when prices rise, since net income would not be lessened by proportionate increases in operating costs, many of which are fixed and would tend to rise more slowly than prices. If beef prices significantly dropped and if the base rental were too high, the formula could put the rancher at a temporary disadvantage. Therefore, the proportion of the base charge to the total rental is important because it determines the degree of variance in rentals. A high fixed charge would insure a more constant income than a low base, but in times of dropping prices would probably prove too rigid. Too low a base would fail to insure sufficient income to cover taxes and costs and, by changing almost in direct proportion to the price of beef, could result in wildly fluctuating income. A balance should be struck between extreme rigidity and excessive elasticity. Probably no one figure, however, could be found which would be satisfactory for all economic conditions. A base figure which is workable and adequate today could be too high for catastrophic economic conditions.

Fifty cents is recommended as the base fee. With a state-wide average tax of 8c an acre on grazing land and an average of 3.62 acres required to supply one AUM, a 50c base in most cases would be sufficient to off-set the tax-free status of the land and still leave some margin to defray administrative costs. For example, grazing districts in Montana hold 19 leases for tax costs. The highest of these is 13.7c an acre; the lowest 7.2c and the median 9.9c. On the basis of the districts' own carrying capacity figures, tax costs amount to an average of 46.6c per AUM for the 19 leases.

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[4] Montana State College, *Challenges to Montana Agriculture*, Vol. 1, No. 2, (1959). The Agricultural Research Service of the U. S. Department of Agriculture in its series *Current Developments in the Farm Real Estate Market*, publishes indexes to indicate land value increases. In their index 1947-49 equals 100. The 1959 index for grazing land in Montana was 190. By 1960 it had reached 197. This would indicate that grazing lands have almost doubled in value in the past thirteen years.

It is recommended that 2½ times the average price of beef in the previous year be added to the base of 50c. This would result in a total AUM fee about one-third that of prevailing commercial rentals. The difference should be sufficient compensation for additional services, if any, provided in private agreements. Had this formula been in use since 1952, the following AUM rentals would have resulted:

1952	$1.19	1957	$ .85
1953	1.26	1958	.88
1954	.95	1959	.99
1955	.87	1960	1.08
1956	.89	1961	1.01

The 1961 fee which results from the recommended formula is $1.01; the 1961 fee which results from the present formula is 48c. If the recommended formula were adopted, income would be about twice what the present formula will yield. The effects of the recommended formula and the existing one can be estimated by multiplying the fee each yields times the total AUM carrying capacity of all state grazing lands. This will not result in exact incomes because competitive bids raise total income; but if the effects of competitive bids are omitted, 1961 income which would result from the use of the recommended formula would be $1,182,777; income from the 48c fee would be $562,112, or less than half that of the recommended formula.

The present state grazing fee formula dictates the use of an average beef price for 3 previous years. Since the use of a 3-year average means that rentals rise or fall more slowly than beef prices, the effect is to flatten fluctuations in income from grazing land. This makes it easy for the lessee to anticipate next year's rental and makes budget planning easier for schools. Nonetheless, the use of the previous year's price of beef is suggested as more advantageous to the rancher, who will benefit almost immediately through reduced fees resulting from depressed prices the previous year.

Chapter V

MISCELLANEOUS RECOMMENDATIONS

VARIABLE LEASE TERMS

Under present statutes the maximum lease term for agricultural and grazing leases is ten years. The land office accommodates lessees' requests for shorter terms. A lease term of less than 10 years is generally resorted to when a lessee has had to face competition. This practice of varying lease terms can be used to avoid competition.

In a recent case an individual, desirous of securing a lease, bid and lost when the holder of the lease matched the bid. The unsuccessful bidder waited almost ten years and then expressed a desire to bid again but was informed that the lease still had many years to run. The lessee, after matching his competitor's bid, requested a short-term lease, hoping to get a better price on a subsequent lease. At the expiration of the short-term lease, he applied for and was awarded a ten-year lease at the statutory minimum rental. The land office does not carry the names of interested persons through the life of more than one lease. The competitor, unaware of this, assumed a ten-year lease term was in effect. Since no inquiry was made during the life of the short-term lease, the interested party was not informed and lost the opportunity to acquire the land. The lessee's stratagem worked. After paying a high competitive price for a few years, he was able to renew his lease and be assured of paying the minimum rental for another ten years.

Recommendation

To avoid such incidents in the future, the Council recommends that lease terms of five and ten years only be offered to lessees and that all persons previously expressing an interest in leasing the land be notified upon expiration or cancellation of the lease. (See Bill III in *Appendix A* for remedial legislation.)

BLOCK LEASING

There is no statutory limit to the amount of state land which any one individual may lease. Sections 81-407 states that tracts of more than one section may be embraced under one lease and that individuals can hold more than one lease. The Enabling Act originally limited the quantity of state land which could be leased to "one person or company" to one section.

This limitation led to some administrative problems. Commissioner Brandjord, who urged repeal of the provision, commented that "from the very beginning of statehood methods were devised by which one person or company could in reality lease more than one section." Not only did the provision not prevent individuals from leasing more than one section but it actually proved troublesome where lands were "so situated that they could be used to advantage only by one or a few stockmen." In such cases the commissioner was prevented from leasing lands to the only individuals who could use them.

Consequently, in 1933 the legislature accepted a congressional amendment of the Enabling Act which repealed this provision. At its meeting of May 18, 1933 the Board of Land Commissioners resolved that a limit of four sections under one lease be established but that one person be allowed to hold more than one lease.

State lands are leased in various size tracts. Some leases are for tracts as small as 40 acres; other leases contain many sections. Since each state section is unique in its location with respect to other lands and to the uses to which it can be put, no rigid rule on

the practical size of lease units can be established. As a general rule land should be leased in tracts of not less than one section; however, situations will arise where it will be to the state's advantage to lease parts of sections separately.

The inclusion of more than one section under a single lease saves clerical work. Were a separate lease required for each state section, the work load of the commissioner's office would be greatly increased. Where clerical convenience is the sole reason for putting more than one section in a single lease, however, the unit should not be maintained at the expense of precluding competitive bids.

Present land office policy does not favor breaking up large blocks of state lands into individual leases. Consequently, individuals attempting to bid for a section which is one of several sections held under a single lease have been prevented from doing so.

Recommendation

The Council does not believe that state lands should necessarily be distributed equally among potential lessees. The only concern of the state should be to secure the maximum return to the trust funds, regardless of who leases the lands. However, when competitive bids are rejected as a matter of course because the bid is for less than all of the state sections held under a lease, in many cases the greatest income is not realized. In order to secure the fullest possible return to the state, the Council recommends that competitive bids for less than the full number of sections held under one lease be accepted unless the rental for the new lease plus the rental for the remaining lands in the original lease would be less than the total rental for the original lease.

Sometimes sections are leased only because they complement other state lands included in the same lease. A lessee who loses key sections which are needed for full utilization of the sections not lost to a competitor, may be unwilling to continue to lease the remaining sections. Under such circumstances it would not be to the state's advantage to break up a lease unit unless the competitive price paid for the lands split off from the lease compensate for the loss of revenue from remaining unleased lands. (See Bill III in *Appendix A* for remedial legislation.)

Conditions which would define the impossibility of leasing remaining sections cannot be established by statute. Therefore, whether or not a block lease is necessary to keep all sections involved under lease must be left to the discretion of the commissioner.

TRESPASS ON STATE LANDS

Several sections of the codes relate to trespass on state lands. 94-3334 which pertains to trespass of individuals is as follows:

> *Injury to trees on public lands.* Every person who commits a trespass on or any injury to any state lands or the improvements thereon, or who, without the proper authority, cuts, fells, girdles, injures or destroys any trees or timber upon any of the school, university or other state lands, or removes or attempts to remove the same, or knowingly purchases or receives such trees or timber, or advises the removal thereof, is guilty of a misdemeanor, and is also liable to the state for three (3) times the value of said trees or timber, or lumber into which the same are converted.
>
> All fines collected and all moneys recovered by virtue of this section must be paid into the trust fund if the lands involved are held in trust either through deed or grant or be paid to the funds of the state departments administering such lands where lands not held in trust are involved.

94-35-237 and 94-35-238 apply to trespass of livestock on state lands under lease. These are as follows:

> 94-35-237. It shall be unlawful for any person or persons to wilfully drive, or cause to be driven, any livestock held in herd on or over any field, ranch property, or valid claim in process of title under any of the land laws of the United States, or under lease from the state of Montana, whether the same be fenced or not; provided, that any lands so owned, or under process of title, or under lease, and not fenced, shall be clearly defined by suitable monuments or stakes, and plough-furrows, with printed or written notices indicating the lands so held.
>
> 95-35-238. Any violations of the provisions of this act shall render the owner, lessee, employee, or other person in control, or herder of such stock so driven or herded, or permitted to enter upon the property referred to in the preceding section, subject to a fine of not less than twenty-five dollars nor more than five hundred dollars.

These two sections provide little protection. They do not apply to state lands *not* under lease. Moreover, in order to be in trespass stock would have to be herded onto state lands, and the lands themselves, if not fenced, would have to be clearly marked as state lands.

The state had what may have been an adequate trespass law for lands not under lease in Section 1904, Chapter 149, Revised Codes of 1921 as amended by Chapter 189, Session Laws of 1925. This statute reads as follows:

> All corporations, companies or persons who shall use or occupy state lands for farming, grazing or otherwise, contrary to the provisions of the lease, or without first having paid the Register of State Lands the rental price for such privilege, or who shall so use or occupy said lands for more than thirty days after the cancellation or expiration of a lease, except by authority of the State Land Board, shall be regarded as a trespasser, and shall be required to pay to the Register of State Lands, double rental for the time so used or occupied, which shall be computed for not less than one year, and the State Land Agent or any deputy State Land Agent is hereby authorized and empowered, and it shall be his duty to collect such double rental for the full time of such trespass, by the seizure and sale of any crop growing upon State Lands or by the seizure and sale of any livestock found illegally grazing upon state lands, and livestock found within an enclosure upon state land shall be prima facie evidence of such trespass. Provided; that for purpose of enforcing this act the State Land Agent or his deputy is hereby given authority as a state officer to proceed as required by law, in the foreclosure of chattel mortgages, and any corporation, company or person who shall construct a reservoir, ditch, railroad, public highway, private road, pipe line, telegraph or telephone line or in any manner occupy or enter upon the lands belonging to the state without first having secured the authority and permission of the State Board of Land Commissioners to so occupy said land, for such purposes, shall be regarded as a trespasser and upon conviction thereof shall be fined in the sum of not less than twenty-five dollars and not more than fifty dollars for each offense, and each day shall constitute a separate offense.

This law was repealed by Chapter 60, Session Laws of 1927.

In his report for the biennium July 1, 1928 to June 30, 1930, the Commissioner of State Lands commented that "New statutes should be written on this subject defining various kinds of trespass on State lands and prescribing reasonable fines and penalties. The bill should be such as to give adequate protection to the property of the State without any hardship upon the law-abiding users of State lands".

State cooperative grazing districts are protected from trespass by livestock by 46-2326, which is as follows:

> 46-2326. (1) No owner or person in control of livestock shall permit the same to run at large, or under herd, within the exterior boundaries of any state district, unless the owner or person in control of such livestock shall first obtain a grazing permit for same from such state district; and the owner or person in control of such livestock running at large, or under herd, within a state district, without a permit from the district, or in excess of such permit, shall be liable for all damages sustained thereby by any member, permittee or state district. If any such livestock wrongfully enters upon premises within such district, the owner or person in control of such trespassing livestock, who willfully or negligently permits same to run at large within the district, without first obtaining a permit therefor from the district, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not less than ten dollars ($10.00), nor more than five hundred dollars ($500.00), and in addition to said punishment, shall be liable for all damages sustained thereby to the party entitled thereto; provided that this provision shall not require any person to obtain a grazing permit to graze livestock upon land owned or controlled by him within such state district, if the stock so grazed is restrained from running at large within such state district and from grazing upon any other lands within the state district.

Subsequent sections give the district authority to impound the trespassing stock until damages are recovered: if necessary, the district can sell the animals to recover damages. Forest Service and BLM lands are similarly protected from trespass by livestock. Neither federal agency need fence its lands and owners of cattle who graze livestock without permits are in trespass.

Recommendation

The state cannot police the more than five million acres of land scattered throughout the state; neither can it fence all its lands. In view of the special position of state lands, the Council recommends that state lands be protected by law from willful trespass by persons and livestock to a degree at least equal to federal lands and lands within state cooperative grazing districts. Provision should also be made to treat users of state land through illegal sublease as trespassers. Although subleases not approved by the commissioner are now illegal, the restriction is almost unenforceable because of the absence of an adequate trespass law. (See Bill IV in *Appendix A* for suggested legislation.)

MORTGAGE LANDS

Sections of the codes relating to state lands are sprinkled with special references to "mortgage lands", or lands the state acquired title to when farm mortgage loans became delinquent during the 1920's. (The process by which the state acquired these lands is described in Chapter III of this report.) By 1952, losses to permanent fund principle and interest had been fully recovered, and in 1953 the remainder or more than 300,000 acres of mortgage lands were transferred to the common school grant. Existing statutory provisions

were largely designed to facilitate the sale of mortgage lands in order to recoup losses sustained through farm mortgage loans. Since all losses have been recovered and since these lands are now part of school grant, there is no need for such special provisions and they can be repealed.

However, two sections are not obsolete. 81-902 and 81-1701 reserve to purchasers of mortgage lands 6¼% of all oil and gas produced, or one-half of the state's share, and one-half of all rentals, bonuses, and penalties. Thus, where the state has sold or sells mortgage lands while these provisions are in effect, it automatically loses one-half of any future income from oil and gas. At the present time the state has 75,000 acres of mortgage land under lease for oil and gas. In view of recent extensive exploration by oil companies, these special provisions may well prove to be troublesome and the source of future loss of revenue to the permanent funds. Repeal of these provisions will not remove them from existing contracts but it would protect the state if mortgage lands were sold in the future. (Bill V in *Appendix A* would repeal references to mortgage lands.)

The practice of the land office has been not to refund any money under these provisions unless the purchaser of mortgage lands demands it.

Chapter VI

INVESTMENTS

House Joint Resolution No. 4 directed the Council "to make a thorough and complete study of the laws and regulations pertaining to state lands and investments". The Council devoted most of its time to a study of the laws and procedures under which state lands are managed. However, under the above resolution it feels obligated to comment briefly on the investment of the permanent funds arising from federal land grants.

While the immediate area of study assigned to the Council relates only to state lands and funds arising from sale or rent of the lands, because these funds are by law to be invested under a unified investment plan, the investment procedures for all state moneys coming under this plan have been included in the study.

The state board of land commissioners is a constitutional body responsible for the leasing and sale of lands granted by the federal government. From the first the state board of land commissioners was also given responsibility for investing the permanent funds built up from the sale of state lands. The board's role has gradually evolved, in theory at least, from the administrative agency for the federal land grants into the chief investing agency not only of moneys originating from the federal land grants but many other public funds as well. A review of the steps by which greater numbers of funds were pooled for investment and by which the state board of land commissioners acquired broader investment responsibilities will aid in attaining a better understanding of present investment procedures.

The Development of Unified Investment of Public Funds in Montana

Article XXI of the constitution, which was approved by the electorate at the general election of November 4, 1924, authorized the creation of the "Montana trust and legacy fund" which included all "gifts, donations, grants and legacies" for educational purposes. In addition to the trust and legacy fund the state was authorized to accept for the purpose of investment "sinking funds, permanent funds, and cumulative funds belonging to the state and its political subdivisions, and also other funds designated by the legislative assembly, when requested to do so by the authorities having the care and custody of such funds". Responsibility for investing and administering the funds designated in Article XXI was entrusted to "the same state board and officers that have charge of the investment and administration of the public school fund". By statute this meant the state board of land commissioners and the commissioner of state lands and investments. Article XXI also designated the justices of the supreme court as a supervisory board over the administration of the trust and legacy fund.

The legislative assembly in chapter 70 of the Session Laws of 1929 passed an act which embodied a "Unified Investment Plan". This act spelled out in detail the procedures to be followed in the investment of the Montana trust and legacy fund. The act also provided that other departments of the state could voluntarily avail themselves of the services of the state board of land commissioners as an investing agency.[1]

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[1] "Any department of the government of the State of Montana, state board, commission, bureau, institution, office or officer, which has under its or his administration any funds subject to investment, is hereby granted the right, upon making requests therefore, to have such fund or any part thereof invested by the State Board of Land Commissioners according to this plan under the provisions of this act. The said Board is hereby authorized and required to invest and administer the fund or part of the fund for which such requests has been made." Section 79-1203 now *requires* them to let the land board invest the money.

However, the act expressly exempted land grant permanent funds from the unified investment plan: "No fund arising mainly from federal land grants made to the State of Montana shall be invested or administered under this plan." All funds invested according to the unified investment plan, were to be administered as one common fund for the purposes of investment.

An amendment to article XXI was approved by the electorate in 1938 which placed the public school permanent fund and the other permanent funds arising from the federal land grants in the Montana trust and legacy fund for the purpose of investment. Under this plan the principal of each of the several funds, as it became available for investment, would be added to the Montana trust and legacy fund for the purpose of investment. While united for the purposes of investment, each fund would, nonetheless, retain its individual indentity. This conversion of the several permanent funds into one combined investment fund is still going on.

The final step in the development of a unified system of investing public moneys was taken in 1953. In its report to the 33rd legislative assembly of that year, the Commission on Reorganization of State Government of the State of Montana observed that the following state agencies were responsible for investing public moneys: The state land board, the state board of examiners, the public employee's retirement board, the industrial accident board, and the state depository board. The commission stated that further unification of investments would:

(1) Eliminate duplication of offices and personnel.

(2) Provide a better over-all administration and tend to greater economy in operations.

(3) Make it possible to provide at a minimum cost an adequate investments staff with technical advice, market data, and financial services.

(4) Make possible the pooling of small funds so as to secure better security and the transferring of a security from one fund to another when one fund is buying and the other selling, resulting in greater stability and making it possible to invest closer to the total amount of money available.

To this end the commission recommended that authority to make investments involving all funds available for investments be delegated to the state board of land commissioners. The legislative assembly accepted these recommendations with the passage of chapter 176 of the session laws of 1953 which amended the unified investments plan into its present form.

Present Constitutional and Statutory Investment Provisions

Section 11 of the enabling act provides that the proceeds from the sale of any of the lands granted by the federal government shall constitute permanent funds for the support and maintenance of the public schools and the various institutions for which the lands have been granted. The state is allowed, in its discretion, to add a portion of the annual income to its permanent funds.

Article XI of the constitution provides that the public school fund shall consist of the proceeds of the school lands granted to the state as well as proceeds of other grants of land for general educational purposes, escheated estates, unclaimed shares and dividends of Montana corporations and all other grants or gifts made to the state for general educational purposes. This fund is to be guaranteed by the state against loss or diversion. Ninety-five percent (95%) of the interest received on the school funds and 95% of all rents from school lands are to be apportioned annually to the school districts. The remaining 5% of all interests and rents must annually be added to the public school fund to become an inseparable part thereof.

Article XXI restricts investments in the Montana trust and legacy fund to school district, county and municipal bonds, bonds for the state of Montana, bonds of the United States, and federal land bank bonds.

Under this constitutional outline, a unified investment plan has been established for the investment of state funds. This plan is described in chapter 12 of title 79, R.C.M., 1947. The unified investment plan sets up three investment funds, each of which is composed of different moneys and each of which is subject to different restrictions and provisions as to permissible types of investments.

(1) The first of these funds is the Montana Trust and Legacy Fund which consists of the permanent school fund described in article XI of the constitution above: ". . . and all other public funds of the state subject to long-term investment not legally in the custody of any lawfully constituted board or the investment of which has not been designated by statute." The restrictions for the investment of the trust and legacy fund are those established in article XXI of the constitution mentioned above. These requirements are repeated in section 81-1001 to 81-1008, R.C.M., 1947.

(2) The second fund is the Long Term Investment Fund. The state board of land commissioners is authorized and required to invest in this fund that part of the highway patrolmen's retirement fund in excess of $25,000, public employees retirement fund, industrial accident reserve fund, all funds subject to investment as designated by the teacher's retirement board, that part of the fish and game fund which is available for investment, "and all other funds designated by statute." Money in the long term investment fund may be invested as follows:

(a) In securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; and securities issued by instrumentalities of the United States government.

(b) General obligations bonds of school districts within the state; general obligation bonds of the several counties and cities of the state; in general obligation bonds of the state; in capital building bonds of the state; in bonds issued by the federal land bank; in interest bearing warrants upon the general fund of the state and interest bearing warrants upon the general fund, the poor fund, the road fund, or the bridge fund of the several counties of the state.

(c) In debentures issued by the federal housing administrator, and in obligations of national mortgage associations.

(d) In first mortgages on unencumbered real property when such mortgages are guaranteed or insured in the amounts of 50% or more of the loan by the U. S. government. No more than 50% of the funds in one account are to be invested in such mortgages.

(3) The third fund is the Short Term Investment fund. The state board of land commissioners is to invest under this fund any surplus cash in the office of the state treasurer; any money in any state bond sinking and interest fund not required for the immediate payment of bonds, principal, or interest; any educational bonds interest and sinking fund; any of the Montana highway patrolmen's retirement fund less than $25,000 and any other fund designated by statute to be so invested or any fund in the custody of an officer of the state or of any city, county, or school district if the investment of the fund is requested by the officer or governing body. The funds in the short term investment fund may be invested as follows:

(a) Surplus cash in the treasurer's office may be invested in registered warrants of the state and in treasury obligations of the United States government.

(b) Any sinking and interest fund and any other fund may be invested in the bonds of the state of Montana or bonds of the United States, treasury obligations of the United States and in interest bearing warrants upon the general fund of the state.

Except as otherwise provided by law, any state governmental department which has under its administration any funds subject to investment must have such funds invested by the state board of land commissioners under one of the three funds mentioned above.

The law also provides the general framework under which the interest collected shall be credited pro rata to the various funds constituting the Montana trust and legacy fund.

Administration of Investments

Responsibility for administering these three funds under the unified investment plan is vested in the state board of land commissioners. The law authorizes the state board of land commissioners to employ an expert on financial matters to advise on investments but limits the salary to an amount not in excess of $1000 per year. An investments expert was retained for only a brief period in 1957. The person so retained limited his activity to verifying the investments already made by the department of state lands and investments.

The procedures followed for the trust and legacy fund are these: A list of bond offerings is presented to the state board of land commissioners at its monthly meeting. The board authorizes the commissioner to bid on these issues but in most instances he has already done so. Moreover, the commissioner does not always bid on all issues for which he has received authorization to do so. Section 79-1102 requires all officials responsible for local bond issues to notify the land board of the issue at least 20 days prior to the sale. Since the board of land commissioners usually meets only once a month, it is possible that many bond issues could be announced and the sale held before the commissioner could act if the board's approval were required. Consequently, the commissioner actually bids or makes the purchases and the board ratifies his action.

Most of the actual investment work for the Montana trust and legacy fund is done by a bond clerk in the department of state lands and investments. Usually one of the local banks is consulted prior to purchasing U.S. treasury securities.

Article XXI provides that the Montana supreme court shall act as a supervisory board for the Montana trust and legacy fund. The court receives annual statements of the status of investments in the trust and legacy fund but has never exercised any supervision over these investments.

Thus, the state land board itself neither invests the trust and legacy fund nor does it always review the investments after they are made. Consequently, the full burden of investing trust and legacy fund money falls on the commissioner of state lands and investments or his subordinate employees.

Under the unified investment plan outlined above, the board of land commissioners is also required to invest the moneys of the long term and short term investment funds. The teachers' retirement fund and the public employees' retirement fund are included in the long term investment fund; however, the funds of each of these departments are actually invested by employees of the respective departments. Each decides what investments are desirable and then secures the land commissioner's approval. The investments are then made and the commissioner secures the retroactive approval of the board of land commissioners. Thus, the responsibility for investing the other funds which are supposedly included in the unified investment plan falls upon the various departments having such moneys under their administration.

The commissioner does invest in the long term and short term funds moneys of the state depository board, Montana highway patrolmen's retirement board, the Korean war veterans honorarium, livestock sanitary board, and the fish and game commission. These investments are made at the request of the department heads who generally recommend their choice of investments. The commissioner does not invest such moneys on other than a request basis since he does not know what moneys the departments have on hand or what their immediate cash needs are. Generally, the board of land commissioners approves these investments after they are made, although there are instances of some investments which have never been approved by the board.

Effect of Constitutional Restrictions on Earning Power of Funds

TYPE OF INVESTMENTS

The constitution places stringent limitations on the types of investments which can be made with moneys in the trust and legacy fund. The Council has not thoroughly explored the possibilities of enlarging the category of permissible investments nor has it fully researched all of the problems involved. No recommendations for removing these limitations are made. However, the legislative assembly should be aware of a trend in other states to re-evaluate laws governing the investment activities of their trust funds. This development is primarily a result of a growing awareness that state trust funds are not displaying the ability to grow at a pace consistent with the growth rate of obligations.

Trust fund growth is a combination of additions to principal and the rate of yield on the total invested principal. The failure of a trust fund to increase both as to additions to principal and yield will necessitate an increased reliance on appropriated funds to close the gap between income and obligations. Recognizing this problem, some states have modified the traditional approach to state funds investment.

Protection of principal, which is apparently provided in the present Montana trust and legacy fund is, of course, one of the important objectives of any investment program. However, it is questionable whether safety of principal should be allowed to overshadow another investment objective—the earning of interest income. The ultimate objective of an investment program should be the greatest possible interest income without sacrificing safety or liquidity. The Montana trust and legacy fund consists entirely of U.S. and local government securities and the cost of such "super safety" is paid partly in terms of reduced rates of interest income.

It is not altogether true that government securities do, in fact, protect the principal. The effect of inflation on funds invested exclusively in such securities is known to everyone. A security which cannot show capital appreciation cannot really preserve the principal because the principal only has meaning in terms of the real things, goods, and services that it can purchase. Inflation can diminish the principal just as a series of bad investments can. The principal of the Montana trust and legacy fund increased from almost $18 million in 1938 to more than $38 million in 1958, or an increase of 113%. However, in terms of effective purchasing power, annual interest income amounted to $1,071,605 in 1938 and $901,036 in 1958.[1] In other words, Montana is sacrificing interest income by holding conservative securities but is not attaining safety of principal when this is measured in terms of purchasing power.

There have been, of course, many seemingly sound reasons for conservative construction of the state laws and constitutional provisions. These reasons reflect the general attitudes towards investments that have been prevalent during one period or another both in Montana and the other states. For example, the absence of corporate securities on the eli-

[1] The figures for Montana were supplied by the land office. The purchasing power of 1938 and 1958 interest incomes were derived by use of the Bureau of Labor Statistics consumer price index.

gibility list can be regarded as an outgrowth of that period of financial history when the advantage was on the side of the security issuer, when financial scandals were the order of the day and when the investor was at the mercy of the "insiders" who manipulated markets for their profits. With the passage of time, however, increased governmental supervision and control have profoundly changed American financial conditions so that now some case might be made for stating that any existing advantage is on the side of the investor.

Montana might well observe the results of the investing of trust funds by other states in high grade corporate securities. New Mexico recently passed legislation authorizing its investments council to place up to 25% of the state's permanent fund in corporate securities; however, this was no pioneering move. Other states, Texas, Wisconsin and New Jersey among them, are similarly permitted by law to invest at least a portion of state held funds in corporate securities.

Certainly, however, no such program should be contemplated in Montana until a sound, well regulated investments program under the direction of experienced investments administrators has been established in the state. At that time the people of Montana might wish to consider a gradual program of liberalization to include corporate bonds, revenue bonds and eventually, corporate stocks. The state certainly has no business investing in corporate securities at the present time.

RESTRICTIONS ON SALES OF SECURITIES

The price of U.S. government securities is not supported by the government. Therefore, such prices fluctuate with the securities market. Bonds are sold at a premium (i.e. more than their face value) and at a discount (i.e. at less than their face value) as determined by the market for such securities. The state can take part in the market by trading its securities, but the terms upon which it can do so are not clear. The constitution requires that no state lands shall ever be disposed of "unless the full market value of the estate or interest disposed of . . . be paid or safely secured to the state." Constitutional and enabling act provisions relating to trust funds add additional requirements regarding the disposition of these funds. Article XI provides that the school fund "shall forever remain inviolate, guaranteed by the state against loss or diversion . . .".

These provisions have never been subjected to a test by the Montana supreme court. Their precise effect upon the state's ability to trade its securities cannot be interpreted with certainty. However, one restriction does appear to be clear enough: The state may not realize a temporary capital loss by selling its securities even though it may be assured of recouping that loss through increased interest income. The question of whether the prohibition is against selling at less than purchase price or face value, however, has not been definitely resolved.

There is no doubt that securities comprising the trust and legacy fund can be sold or traded when the sale price is equal to or exceeds the face value and the purchase price. Whether securities could be sold at face value or more than face value but less than purchase price, or whether securities could be sold at purchase price or more than purchase price but less than face value is open to question.

Persons familiar with the management of investments agree that it is impossible to administer the investment of government securities effectively unless selling at a loss is permitted. It is sometimes necessary to sell securities at a loss in order to purchase other securities with higher yields. Such losses are only temporary; net earnings are increased through higher yields.

It may be that the state is wise to freeze its funds in this manner and to hedge the sale of securities with restrictions. In view of the present administration of trust fund investments such restrictions are not unreasonable. However, under such restrictions the state will probably never achieve the rate of return on government securities realized by private investors.

Conclusions

About 75% of the 40 million dollar trust and legacy fund is invested in U.S. government securities, the remainder in city, county and school district general obligation bonds.

The department of state lands and investments does not compute the rate of return on its total investments. Unless accompanied by a thorough analysis of the department's accounting system, an accurate computation of interest would be difficult. By using the average balances in the fund and the amount of interest income for recent years, the apparent rate of return has been computed as: 1956—2.782%; 1957—2.875%; 1958—2.888%. By employing comparable figures, the apparent interest rate earned in 1959 has been computed as 3.606%. Interest rates have recently improved, but this last figure has been greatly inflated as a result of the department's method of handling accrued interest on $19,500,000 of U.S. bonds exchanged in 1959.

As a general statement, it would be fair to say that the state is not doing too badly in its investment of the Montana trust and legacy fund. Because of the inherent differences between government and private business the state may never realize a rate of return on its investments equal to that of insurance companies, banks and mutual funds, and perhaps should not be expected to. However, even within present restrictions, with the addition of trained personnel, the state could undoubtedly increase its earnings.

Unified Investments Plan

Some of the obvious reasons for coordinating or unifying all investment programs in the state are:

(a) diversification of investments

(b) better supervision by qualified personnel

(c) more available money and, therefore, more economy in buying and selling

(d) greater investment efficiency by means of keeping idle funds invested

(e) avoiding competition among funds

(f) freeing personnel in investing departments for the performance of other duties

Montana's "Unified Investment Plan" exists in name only. The state is not realizing the advantages of a true unified investment plan; nor does it have the benefit of expert counsel on investments. Under the law, the agency responsible for investing the moneys of the trust and legacy fund, the long term fund and the short term fund is the state board of land commissioners. As noted under "Administration of Investments", above, the board, in fact, does not invest the moneys of any of these funds, nor does it always review all investments that are made. Furthermore, the department of state lands and investments does not have any record of the amounts invested by the various departments nor of the nature of the investments. This discrepancy between law and practice means that responsibility is diffused rather than centered in one agency.

Early in 1960 the following departments had the following amounts invested:

Oil and Gas Conservation Commission	$ 100,000
State Board of Hail Insurance	1,400,000
Korean War Veterans Honorarium	500,000
Public Employees Retirement Fund*	21,121,271
Highway Patrolman Retirement Fund*	673,250
Montana Fish and Game Commission*	100,000
State Treasurer (Surplus Cash)	10,679,006
Teachers' Retirement Board*	17,587,746
Industrial Accident Reserve Fund*	8,861,974
Total	$61,023,247

*Specified by statute as part of the long term investment fund (79-1202)

Until the central investment agency has gained the confidence of these departments, there will undoubtedly be some resistance to any attempt to fulfill the intent of the statutes establishing the unified investments plan.

Investments Personnel

It is questionable that an ex officio board could ever satisfactorily function as an investing agency. Less time to attend to investments than their importance deserves and lack of assurance that the board members will have any knowledge of the investments field have led to criticism of conducting investments by ex officio boards:

> ***First, it is elementary that a state will get expert investment management only by employing qualified talent. In this age of specialization, it is no longer rational to leave the investment of state funds to ex-officio committees or bodies, made up of state officials already over-burdened with their major jobs and who have insufficient spare time to become expert in a "sideline" function. It is even more disastrous to delegate the responsibility for actual investments to well-meaning but definite amateurs in a field where technical skill is required.***[2]

The person primarily responsible for investment of the Montana trust and legacy fund is the bond clerk. He has had no formal training nor experience in investments apart from that gained during his employment with the department of land and investments. A bookkeeper, who also has other duties, assists him in keeping track of the money. All of the bond clerk's decisions are subject to the supervision and final approval of the commissioner of state lands and investments. The bond clerk is burdened with a number of duties unrelated to investments; he spends part of his time on right-of-way work, which previously was handled by a full-time clerk, and occasionally assists the commissioner in conducting land sales, and with other projects in the office. Since the chief field agent resigned, the bond clerk also acts as commissioner when the commissioner is out of town. His annual salary is $5400.

Until experienced investment personnel are employed by the state, little can be done to increase the return on the state's investments under the present restrictions.

An example of the kind of gains that can be realized by the state through such experienced personnel was made dramatically clear during a transaction completed by the state land board late in 1959. The board approved a proposal by an investment broker to make the following transaction: $19,500,000 of 2¾% U.S. bonds due 80 75 held by the state

[2] National Municipal League, *Model Investment of State Funds Law*, (1954) p. vii of introduction.

were exchanged with the federal government at par for bonds bearing 1½% due 1964. These 1½% bonds, in turn, were sold at par. The money was used to purchase $19,500,000 of U.S. bonds bearing 3¼% due 83/78. Because of the higher interest rate, the state will receive an additional annual interest income of almost $100,000 or a total of $2,000,000 over the life of the bonds. *This exchange was devised by experienced investments people and voluntarily proposed to the state board of land commissioners.*

On the other hand, an example of faulty management which undoubtedly could have been avoided under a more efficient investment program supervised by experienced personnel occurred in 1960. Six hundred thousand dollars ($600,000) of U.S. treasury bonds matured. The treasurer's office does not consider itself responsible for watching maturity dates but does notify the issuers of bonds that interest payments are due. In this case the treasurer's office was unaware that the U.S. government holds up the last interest payment on this particular type of issue until payment of the principal is requested. About the 20th of the month they noticed that the interest payment due the first of the month had not been paid and notified the land office. The land office also was generally aware of the maturity dates but awaited notice from the treasurer's office that the money was available for re-investment. As a result of this irresolution, the state lost interest in excess of $1250.

The state's funds could also benefit from the experience of a qualified investments man in bidding on municipal and school district bond issues. On some issues the state probably bids a lower rate of interest than would be acceptable to private investors. Bidding on municipals should be the responsibility of someone who is able to analyze the market and balance the interest rate against the risk.

Another facet of state trust fund administration which suffers because of a lack of trained personnel is the records and control system. In order to furnish the Legislative Council with an inventory showing the face value, purchase price, date of purchase, interest rate, redemption date and unpaid balance of all investments the department of state lands and investments found it necessary to hire a special temporary employee to search the records. The department was unable to determine the purchase date price of one group of U.S. bonds with face value of $1,400,000. Improving the inadequate records system should be of first priority if reform of the investments procedures is contemplated.

In recent years a program for the investment of state moneys in other states by a qualified investments officer working under an investment council has been widely accepted. The state of New Mexico has established a state investment council consisting of 3 state officials, 4 appointees, and a $15,000 a year director. In Minnesota, the investment of trust funds is determined by a 5-man board consisting of 4 elected state officials, and a member of the board of regents. The executive secretary of the board receives a salary of $12,500 a year. New Jersey invests its funds under a similar system—an investments officer receiving a salary of $17,000 a year works under an investments committee. North Dakota is presently considering establishing a trust fund investment board consisting of qualified members under which would work a qualified investments specialist. The *Model Investment of State Funds Law* proposed by the National Municipal League also suggests an advisory investment council to recommend policy for the state investment officer.

Reorganizations in other states have generally provided for a states investments officer who functions with the advice of a separate investments council. An investments council in Montana could consist of five members: 3 appointed public members who would be qualified by training and experience in the field of investment or finance and 2 representatives of state funds which have the largest total investment assets. The investments officer could be appointed by the governor from a list of qualified applicants drawn up by the investments council or by the council itself. The council would meet periodically as re-

quired and advise the state investment officer and establish general policy. However, the investment officer would be primarily responsible for investing the state's money and would make final decisions of all investments.

To attract an investment officer who would be solely responsible for the investments and who has the depth of experience necessary for investing state of Montana trust funds, a salary of $15,000 to $20,000 would probably be necessary. However, a competent manager familiar with investments and with the operational problems involved, working under an advisory council of investment consultants, would not have to be as broadly qualified as one who had sole responsibility for investments. Such a manager could probably be attracted for an initial salary of between $9,000 to $12,000 per year.

The Council recommends that the Montana trust and legacy fund, and eventually all state funds subject to investments, be placed under the supervision of an experienced investments person with an adequate staff, and advised by an investments council. *It is believed that even under the present restrictions on the investment of the trust and legacy fund, savings and increased income would offset the expense of such a program.* Several alternatives would be possible. An investments officer could operate under:

(1) The commissioner of public lands in a division of the department of state lands and investments. He would be responsible directly to the commissioner and through him to the state board of land commissioners. An advisory investments council could be appointed to guide the investments officer. Unless the salary of the commissioner is increased, however, this plan would not be practical.

(2) The state board of land commissioners either as a "separate but equal" officer in the state department of lands and investments or in a separate department of investments responsible to the board. In either case an investments council could be appointed to guide the investment officer's activities.

(3) An investments council in a separate department not under the control of the state board of land commissioners. The state board of land commissioners is not given express responsibility in the constitution for investment of the moneys arising from the sale or rental of state lands. Article XXI, section 5 provides that, "The same state board and officers that have charge of the investment and administration of the public school fund of the state shall have charge" of the unified investments plan. Thus, this responsibility could possibly be vested in an entirely distinct agency, although there are some unresolved legal questions involved.

Types of Investments Within the Present Constitutional Restrictions

The constitution and statutes presently limit investments in the trust and legacy fund to school district bonds, county and city bonds, state bonds, U.S. bonds, federal land bank bonds, and interest bearing warrants. The policy of the department of lands and investments has been to invest in municipals and school districts first, usually purchasing U.S. bonds only when bidding on the former type of bonds is unsuccessful. At the present time it appears that the state is realizing a rate of interest from these municipal and school district bonds equal to the interest rate generally prevailing on U.S. government securities. However, even at equal interest rates the local issues are usually accompanied by a greater risk. A North Dakota study reported similar findings:

> ***Generally there is substantial risk associated with these municipal issues, which are so frequently the obligations of small, entirely agricultural communities, and yet this portion of the portfolio is not producing yields greater than those which could have been obtained on risk-free***

U. S. Government Securities. The reason for this unusual situation lies in the fact that income from municipal securities is not subject to Federal Income Tax. Therefore, municipalities are able to borrow at a low rate of interest because persons and corporations in high tax brackets will buy the securities in spite of this rate.

Since State Funds do not pay income taxes, purchasing of municipals is not accompanied by tax advantages available to others. Therefore, a direct comparison of the municipal and U. S. Government interest rates is justified. When this comparison is made, it indicates that municipal holdings involve assumption of extra risk with no increase of earning power.[3]

The state should examine its policy carefully of preferring local municipal and school district bonds over government bonds, particularly if the latter are consistently available at a higher rate of interest. Article XI, section 3 of the constitution provides that the school fund shall be invested "so far as possible in public securities within the state, including school district bonds issued for the erection of school buildings, under the restrictions to be provided by law." The provision of the constitution is, of course, only advisory. It was apparently the intention of the framers of the Constitution to insure a market for school district bonds, particularly those issues so small as to be unattractive to large investment firms. This certainly is a laudable purpose. However, it may be that it is unnecessary for the state to bid on such bonds to insure a market. Furthermore, the purpose of the school fund is not only for those districts which are contemplating the financing of school buildings but for all schools of the state as well as the various units of the university system who can realize no special direct or indirect financial benefit from use of their funds for the purchase of school district bonds.

When the department of state lands and investments successfully bids for these bonds, it allows the seller to release the bonds one at a time as the cash is needed by the borrower. Thus, on a $100,000 issue, the state is required to commit the full amount of the issue but the municipality or district might only submit two or three $10,000 bonds the first year and pay interest only on the $20,000 or $30,000 received. As a consequence, the state is sometimes required to tie up money at a loss of interest income.

Amortization and Serial Bonds

Section 81-1002, R.C.M. 1947, provides that bonds in which the state invests must be issued and payable on the amortization plan if possible. Section 79-1701 requires the state, or any city, school district or other taxing unit that issues bonds to make such bonds payable on the amortization plan *"if bonds in this form can be sold* and disposed of at a reasonable rate of interest." Probably the reasons for these requirements are that payments for retiring amortization bonds are equal and do not diminish as payments do under serial bonds where the interest due each time is on a smaller unpaid principal. However, it is difficult for the purchaser to sell or exchange amortization bonds which, again, makes it extremely difficult for the state to take advantage of changes in financial conditions. As a result, amortization bonds tend to restrict bidders and consequently result in higher interest rates paid on the part of the local taxing unit. Finally, interest charges on amortization bonds are more costly to the issuer than serial bonds issued for the same principal and interest. This difference in cost can be significant on sizeable bond issues. There would seem to be no valid reason for the preference of amortization bonds over serial bonds.

[3] Mumy and Gimbel, *An Analysis of the North Dakota State Trust Funds,* (1954) Bureau of Economical Business Research, University of North Dakota, p. 9.

APPENDIXES

APPENDIX A

Bill I

.....BILL NO.....

INTRODUCED BY.....

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING CERTAIN CHANGES IN THE GENERAL ADMINISTRATION OF STATE LANDS AND INVESTMENTS BY AMENDING SECTIONS 81-103, 81-201, 81-203 AND 81-207, R.C.M. 1947 RELATING TO THE RULE MAKING POWER OF THE STATE BOARD OF LAND COMMISSIONERS, APPOINTMENT OF THE COMMISSIONER OF STATE LANDS AND INVESTMENTS, APPOINTMENT OF DEPARTMENT EMPLOYEES AND QUALIFICAIONS OF THE CHIEF FIELD AGENT; BY ADDING A NEW PROVISION RELATING TO REMOVAL OF THE CHIEF FIELD AGENT; AND BY REPEALING SECTIONS 81-209, 81-423 AND 81-913, R.C.M. 1947 RELATING TO THE COMMISSIONER'S SALARY AND THE RULE MAKING POWER OF THE BOARD."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 81-103, R.C.M. 1947, is amended to read as follows:

"81-103. The state board of land commissioners, consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution, shall be the governing board of the department of state lands and investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principal shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well being of the people of this state; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the state. The enumeration in this act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated.

The board shall formulate rules and regulations, not inconsistent with law, governing the leasing and sale of state land which shall be printed and periodically compiled. Copies of the rules and regulations and notice of changes therein shall be sent to all state land lessees."

Section 2. Section 81-201, R.C.M. 1947, is amended to read as follows:

"81-201. *The* (matter deleted) commissioner of state lands and investments (matter deleted) shall be the chief administrative and executive officer under the board in all matters except those pertaining to the state forests (matter deleted). *He shall be appointed by the board with the advice and consent of the senate and shall serve at the pleasure of the board.* Before assuming the duties of his office, the commissioner shall

take and subscribe to the constitutional oath of office and shall provide a surety company bond in the amount of twenty-five thousand dollars ($25,000) conditioned for the faithful discharge of his duties, which bond shall be subject to the approval of the board and filed with the secretary of state; the premium thereon shall be paid by the state as the bonds of other state officials."

Section 3. Section 81-203, R.C.M. 1947, is amended to read as follows:

"81-203. The commissioner shall have the authority to appoint (matter deleted) *such* employees as he may deem necessary for the proper performance of the work of his office, subject, however, to the approval of the state board of (matter deleted) *land commissioners* as to the number of (matter deleted) employees. He shall also have authority to prescribe rules and regulations, not inconsistent with law *or the rules of the board*, for the organization and management of his office, for the conduct of the office and field forces, for the distribution and performance of its business, and the custody, use and preservation of its records, papers, books, documents, equipment and other property."

Section 4. Section 81-207, R.C.M. 1947, is amended to read as follows:

"81-207. *The chief field agent who shall be appointed by the commissioner, shall hold a degree in either agriculture, range management or an allied field from an accredited college or university and shall have at least three (3) years active experience in land management. Subject to the approval of the commissioner, the chief field agent shall appoint deputy field agents to assist him in the field work of the department.* Under the direction of the commissioner, the chief field agent shall have charge of all the field work of the department, except the work falling under the office of the state forester, and shall perform such additional services and duties as the commissioner may from time to time designate; during the absence or disability of the commissioner he shall perform all the duties of the commissioner."

Section 5. After a probationary period of one year's continuous employment, the chief field agent shall be subject to removal by the commissioner only for misfeasance, nonfeasance or malfeasance in office. Before he may be so removed, formal charges in writing must be preferred and an opportunity provided to him to appear and defend himself against such charges. Notice of the time and place for hearing the charges shall be served upon the employee at least ten (10) days prior to the day set for the hearing. When the charges have been preferred, the state board of land commissioners has the power and authority to suspend the employee until after the determination of the charges preferred against him.

The state board of land commissioners shall conduct an open hearing to determine whether the employee should be removed. They have the power to compel the attendance of witnesses at the hearing and to examine them under oath and to require the production of books, papers and other evidence at such hearing, and for that purpose to issue subpoenas and cause the same to be served and executed in any part of the state. The employee is entitled to be confronted with the witnesses against him, and he, or his counsel, shall have an opportunity to cross-examine the same, and to introduce testimony in his own behalf. Within fifteen (15) days after such hearing the board shall render its decision in writing. If the effect of the decision is to exonerate the employee, he shall be entitled to reimbursement for any loss in salary caused by the charges against him.

Section 6. Sections 81-209, 81-423 and 81-913, R.C.M. 1947, are repealed.

Bill 11

.....BILL NO.....

INTRODUCED BY.....

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE SALE OF STATE LANDS; AMENDING SECTION 81-907, R.C.M. 1947 TO INCLUDE A DECLARATION OF POLICY OF THE STATE TO PRESERVE THE LANDS GRANTED TO IT BY THE FEDERAL GOVERNMENT; AMENDING SECTION 81-919, R.C.M. 1947, RELATING TO IMPROVEMENTS ON STATE LANDS WHICH HAVE BEEN SOLD; AND REPEALING SECTIONS 81-937, 81-938, 81-939, 81-940, 81-941 AND 81-942, R.C.M. 1947, AUTHORIZING THE SALE OF A TRACT OF STATE LAND IN YELLOWSTONE COUNTY."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 81-907, R.C.M. 1947, is amended to read as follows:

"81-907. *It is hereby declared to be the policy of the state of Montana to preserve and hold all of the lands granted to it in trust by the federal government for the benefit of the public schools and various state institutions. The state board of land commissioners shall be guided by this policy and, except when the sale of small parcels will ease the administrative burden of land management, shall endeavor to retain ownership over all state lands.*

The state board of land commissioners is hereby vested with the power and authority to decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this act, as the best interests of the state may appear to require; provided, however, that as a general rule no sale of state lands shall be held unless applications have been made for the purchase of lands within one (1) county by prospective purchasers representing at least twelve (12) families."

Section 2. Section 81-919, R.C.M. 1947, is amended to read as follows:

"81-919. Whenever any state land has been sold on which there are improvements belonging to a lessee, and some other person than such lessee becomes the purchaser he shall be required to make settlement with such lessee for all improvements on the land belonging to the lessee *which were authorized by law at the time they were placed thereon* before the issuing of the certificate of purchase. All provisions of this act relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee shall apply to the settlement between a lessee and the purchaser."

Section 3. Sections 81-937, 81-938, 81-939, 81-940, 81-941 and 81-942, R.C.M. 1947, are repealed.

Bill 111

.....BILL NO.....

INTRODUCED BY.....

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CHAPTER 4, TITLE 75, R.C.M. 1947 TO CHANGE CERTAIN REQUIREMENTS AND PROVISIONS FOR THE LEASING OF STATE GRAZING AND AGRICULTURAL LANDS BY AMENDING SECTIONS 81-401, 81-402, 81-405, 81-406, 81-407, 81-413, 81-414, 81-415, 81-419, 81-421, 81-422 AND 81-433, R.C.M. 1947 RELATING TO THE APPRAISAL OF STATE LANDS, THE PLACING OF IMPROVEMENTS ON STATE LANDS, LEASE TERMS AND THE CANCELLATION OF LEASES ON STATE LANDS, THE PROCESSING OF APPLICATIONS TO LEASE LESS THAN THE TOTAL ACREAGE LEASED, AND THE FORMULA FOR DETERMINING RENTALS ON STATE GRAZING LANDS; AND BY REPEALING SECTIONS 81-417, 81-432, 81-433.1 AND 81-435, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 81-401, R.C.M. 1947, is amended to read as follows:

"81-401. It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised (matter deleted) *from time to time but not less than once during the term of every lease by competent appraisers. The purpose of such appraisals shall be to determine the market value and general condition of the lands and to properly classify such lands as to use capability.*"

Section 2. Section 81-402, R.C.M. 1947, is amended to read as follows:

"81-402. (1) Under the general direction and control of the state board of land commissioners, the commissioner shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application, provided that, as to agricultural lands, all leases (matter deleted) shall be continued or made upon a crop share rental basis of not less than one-fourth (¼) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater.

(2) In unusual cases the board may authorize a lease upon other basis than crop share, but in all such unusual cases the board shall set forth in its minutes of approval the unusual conditions of the case and the rental to be charged, and by unusual conditions is meant a proposed use of the land for other than the annual production of agricultural crops justifying, in the opinion of the board, a greater money rental of the land than the value of the usual landlord share of annual agricultural crops in the area in which the land is situated. (matter deleted) As to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time under the direction of the commissioner and with the approval of the state board of land commissioners and record made thereof, and such town or city property may be leased at its current appraised rental value for terms of not to exceed five (5) years.

(3) All leases of agricultural or grazing lands, or town or city lots shall be upon condition that the state board of land commissioners may in its discretion, offer said land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease."

Section 3. Section 81-405, R.C.M. 1947, is amended to read as follows:

"81-405. A lessee of state land classed as agricultural, grazing, town lot or city lot, or in any of those classes, who has paid all rentals due from him to the state and who has not violated the terms of his lease shall be entitled to have his lease renewed *for a five (5) or ten (10) year period at the rental rate provided by law for the renewal period, and subject to any other conditions, at the time of the renewal as may by law be imposed as terms of such leases, at any time within thirty (30) days prior to its expiration if no other application or applications for lease of the land have been received thirty (30) days prior to the expiration of his lease. In case such other application or applications have been received the holder of the lease shall have the preference right to lease the land covered by his former lease to the extent that he may take the lease at the highest bid made by any other applicant.* (matter deleted) Applications for lease of lands in this section referred to shall be given preference in the order of their receipt at the office of the commissioner in Helena.

Provided, the state board of land commissioners shall have the power to withdraw any agricultural or grazing state land from further leasing for such period as the board may determine to be in the best interest of the trust fund. (matter deleted) All bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands (matter deleted) shall be in writing and sealed and shall be submitted to the state board of land commissioners at the office of the commissioner (matter deleted)."

Section 4. Section 81-406, R.C.M. 1947, is amended to read as follows:

"81-406. If the owner of any improvements on state lands *of the type authorized by law at the time they were placed thereon* desires to sell such improvements to the new lessee and they are unable to agree on the value thereof, such value shall be ascertained and fixed by three (3) arbitrators, one of which shall be appointed by the owner of the improvements, one by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that such arbitrators may charge shall be paid in equal shares by the owner of the improvements and the new lessee. The value of such improvements so ascertained and fixed shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the commissioner who shall thereupon cause the chief field agent or assistant field agent to examine such improvements and whose decision shall be final. The commissioner shall charge and collect the actual cost of such re-examination to the owner and the new lessee in such proportion as in his judgment justice may demand. The value of such improvements shall be ascertained and fixed as hereinafter and in this act provided."

Section 5. Section 81-407, R.C.M. 1947, is amended to read as follows:

"81-407. No persons shall be qualified to lease state lands except one who is the head of a family unless he or she has attained the age of twenty-one (21) years. Any such person and any association, company or corporation authorized to hold lands under lease may lease state lands, and there may be included under one lease, tracts of lands embracing more than one (1) section, (matter deleted). Any such person, association, company or corporation may hold more than one (1) lease to such lands. No lease to agricultural or grazing lands (matter deleted) shall be for a (matter deleted) *period other than five (5) or* ten (10) years. *Leases for city and town lots shall not exceed five (5) years. When a lease expires or is cancelled the commissioner shall immediately so notify all persons who have expressed an interest in leasing the land during, or immediately preceding the term of such expired or cancelled lease.* If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land hereafter issued which are not issued

as a result of competitive bidding the lessee shall, for the years after such increase becomes effective, pay such increase rental and the terms of grazing leases hereafter issued shall so provide."

Section 6. Section 81-413, R.C.M. 1947, is amended to read as follows:

"81-413. All lands are to be leased in (matter deleted) *tracts containing at least one section when* possible and *when less than one section is leased* care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply, or in such form as to make it more difficult to lease the remaining state lands in the section in which they are located. *If an application for a competitive bid is received to lease one or more sections which comprise less than the total acreage held under an existing lease, the commissioner, unless he believes it will be impossible to lease the remaining acreage plus the acreage applied for at a total rental at least equal to the rental of the original lease, shall issue a separate lease to the highest bidder for such section or sections if such bid is not met by the present lessee.* In case there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, (matter deleted) that bid or application shall be accepted which will bring the largest revenue to the state *if conservative land use can be assured.*"

Section 7. Section 81-414, R.C.M. 1947, is amended to read as follows:

"81-414. Whenever any land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall before doing any such cultivation, make application to the commissioner stating how much land he desires to cultivate, showing the location in the section of such land, send his lease to the commissioner to have the necessary changes made therein, and shall agree that for the remainder of the term of the lease the annual rental shall be at the rate of the full rate for the whole of the leased land for grazing purposes, plus the crop share rental on the basis in this act provided for, the portion of the land designated in the application to be cultivated, whether the lessee continues to cultivate such part or not, it being the intention of this provision to protect the interests of the state and to induce lessees to have the leases originally issued for the usage intended to be made of the land. In case any person shall cultivate lands leased for grazing purposes, without having first secured the right to do so in the manner herein provided, (matter deleted) *the lease shall be cancelled by the commissioner subject to the appeal procedure provided in section 81-422, R.C.M. 1947.*"

Section 8. Section 81-415, R.C.M. 1947, is amended to read as follows:

"81-415. It shall be a condition of all leases of agricultural or grazing state lands, (a) that, in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall so handle the leased land with the view of maintaining its productivity and so that wind and soil erosion and noxious weeds are minimzed, and that crops are so planted with a view of securing the greatest yields of good quality, and (b) that, in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall so manipulate the numbers, class, distribution and season of the range use and the handling, feeding, breeding and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease shall not be abused by overgrazing.

For the gross violation of any of said rules, the lease involved (matter deleted) *shall* be cancelled by the (matter deleted) *commissioner subject to the appeal procedure provided in section 81-422, R.C.M. 1947.*"

Section 9. Section 81-419, R.C.M. 1947, is amended to read as follows:

"81-419. Leases to state lands may be assigned on blanks provided for that purpose by the state board of land commissioners, but no such assignment shall be binding on the state unless the assignment is filed with the commissioner, approved by him and payment made of the assignment fee of one dollar ($1.00). Preference shall always be given to the applicant who wants the land for his own individual use so that the full advantage coming from the leasing and use of such lands may reach those who actually till the soil, and so that they shall not be compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state (matter deleted)*or subleases state lands without filing a copy of the sublease with the commissioner and without receiving his approval, the commissioner shall cancel the lease subject to the appeal procedure provided in section 81-422, R.C.M. 1947.*"

Section 10. Section 81-421, R.C.M. 1947, is amended to read as follows:

"81-421. A lessee of state lands shall have the right to place (matter deleted) upon the lands leased by him *a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of the land,* which improvements may consist of fences, cultivation and improvement of the land itself, irrigation ditches (matter deleted) sheds, wells and reservoirs, and similar improvements. Whenever another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof. Provided, however, that if any of the improvements consists of breaking (meaning the original plowing of the land), and one (1) years crops have been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents ($2.50) per acre, and that in case two (2) or more crops have been raised on the land after the breaking thereof, then in such case the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained and fixed as provided in this act.

In determining the value of these improvements consideration shall be given not only to the original cost but also to the present condition thereof and to their suitableness for the uses ordinarily made of the lands on which they are located, and also to the general state of cultivation of the land, its productive capacity as effected by former use and also to its condition with reference to noxious weeds whether it is infested with such weeds or free from these pests. Consideration shall be given to all actual improvements *of a type authorized by law at the time they are placed on the land* and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee. The former lessee may, however, remove or dispose of the movable improvements on the land to other parties than the lessee; but if he fails to remove such improvements from the land within sixty (60) days from the date of the expiration of his lease, then all of such improvements shall become the property of the state unless the commissioner for good cause shown shall grant additional time for the removal thereof.

Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under the provisions of section 81-406 or that he has offered to pay the value of such improvements as so fixed and determined or that the former lessee elects to remove the improvments."

Section 11. Section 81-422, R.C.M. 1947, is amended to read as follows:

"81-422. The (matter deleted) *commissioner* shall have the power and authority in (matter deleted) *his* discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, and for any other cause which in the judgment of the (matter deleted) *commissioner* makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation shall not entitle the lessee to any refundment of rentals paid or exemption from the payment of any rentals, penalties or other compensation due the state.

When the commissioner cancels a lease pursuant to this section or sections 81-414, 81-415 or 81-419, R.C.M. 1947, he shall immediately notify the lessee by certified mail of such cancellation and the reasons therefor. The date of cancellation shall be fifteen (15) days from the date said notice is received by lessee. The lessee shall have fifteen (15) days from and after the receipt of said notice to file a notice of appeal with the commissioner. If notice of appeal is filed, the lease shall remain in effect until the decision of the board has been handed down. Within ten (10) days after notice of appeal has been filed, the commissioner shall set the time and place of hearing and shall so notify the lessee. The board may, after ten (10) days' notice to the lessee, change the time and place of hearing.

Under such rules as it shall provide and publish, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof shall be on the lessee to show why the lease should not be cancelled. All testimony shall be given under oath and reduced to writing. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for releasing as provided by law. If the board finds that the terms of the lease have been violated but, in its judgment, the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three times the annual rental against the lessee."

Section 12. Section 81-433, R.C.M. 1947, is amended to read as follows:

"81-433. *When used in this section:*

"Animal unit" means one cow, one horse, five sheep or five goats.

"Animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for a period of one (1) month.

The state board of land commissioners shall establish the per annum rental rate per section of all grazing lands upon the animal-unit-month basis as hereinafter provided.

In fixing the minimum annual rental per section, the (matter deleted) *board shall multiply the sum of fifty cents (50c) plus two and one-half (2½) times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.* (matter deleted)

The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the commissioner of state lands and investments made pursuant to section 81-404, Revised Codes of Montana, 1947 (matter deleted).

The average price per pound of beef cattle on the farm in Montana (matter deleted) shall be taken from statistics published by the bureau of agricultural economics of the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time. (matter deleted)"

Section 13. Sections 81-417, 81-432, 81-433.1 and 81-435, R.C.M. 1947 are repealed.

Bill IV

.....BILL NO.....

INTRODUCED BY.....

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING AND PROHIBITING TRESPASS ON LANDS BELONGING TO THE STATE AND REPEALING SECTIONS 94-35-237 AND 94-35-238, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. (1) A person owning or having custody of livestock shall not wilfully permit livestock to run upon lands belonging to the state unless:

(a) Such lands are validly leased or subleased by the person owning or having custody of the livestock; or

(b) The livestock are under herd in transit across unleased lands; or

(c) The livestock are under herd in transit across leased lands, and the person owning or having custody of the livestock has received permission from the lessee.

(2) A person shall not wilfully use or occupy state lands for more than thirty (30) days after the cancellation or expiration of a lease, unless he has received permission from the commissioner.

(3) A person who violates the provisions of subsections (1) or (2) of this section is a trespasser, and upon conviction is punishable by a fine of not less than twenty-five dollars ($25) nor more than fifty dollars ($50,) and each day constitutes a separate offense. In addition to the fine, a convicted trespasser shall pay to the commissioner double rental for the time the lands are so used or occupied. The commissioner may collect the double rental for the full time of the trespass, by the seizure and sale of any crop growing upon state lands or by the seizure and sale of any livestock found illegally grazing upon state lands.

(4) A corporation, company, association or person shall not construct a reservoir, ditch, railroad, public highway, private road, pipe line, telegraph or telephone line or in any manner occupy or enter upon the lands belonging to the state without obtaining permission of the state board of land commissioners to occupy the land for one or more of those purposes. Violation of this subsection is a trespass, and upon conviction an offender is punishable by a fine of not less than twenty-five dollars ($25) nor more than fifty dollars ($50) for each offense, and each day constitutes a separate offense.

Section 2. Sections 94-35-237 and 94-35-238, R.C.M. 1947 are repealed.

Bill V

.....BILL NO.....

INTRODUCED BY .....

A BILL FOR AN ACT ENTITLED: "AN ACT TO DELETE OBSOLETE REFERENCES IN THE REVISED CODES OF MONTANA 1947 TO STATE MORTGAGE LANDS AND FARM MORTGAGE LOANS BY AMENDING SECTIONS 81-902, 81-909, 81-912, 81-1701 AND 81-102, R.C.M. 1947 AND BY REPEALING SECTIONS 81-911, 81-914, 81-1901, 81-1902, 75-3729, 75-3730, 75-3731, 75.3732 AND 75-3733, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 81-902, R.C.M. 1947, is amended to read as follows:

"81-902. All coal, oil, oil shale, gas, phosphate, sodium and other mineral deposits, except sand, gravel, building stone and brick clay, in lands belonging to the state of Montana, or which may hereafter become the property of the state, which have not already been reserved by the United States, are hereby reserved to the state. All such deposits are reserved from sale except upon a rental and royalty basis as provided by law. In the case of lands sold after this act takes effect, a purchaser of any lands belonging to the state or which may hereafter become the property of the state shall acquire no right, title, or interest in or to any of such deposits (matter deleted). The state also reserves for itself and its lessees the right to enter upon (matter deleted) *all lands sold* to prospect for, develop, mine and remove such deposits and to occupy and use so much of the surface of the said lands as may be required for all purposes reasonably extending to the exploring for, mining and removal of such deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason for such entry upon the land and the use and occupancy of the surface thereof. (matter deleted)"

Section 2. Section 81-909, R.C.M. 1947, is amended to read as follows:

"81-909. All sales of state lands shall be only at public auction held at the county court house of the county in which the lands are located; provided, however, that in case no suitable room can be found in such court house at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such court house by public announcement made at the court house at the time fixed for beginning the sale (matter deleted)."

Section 3. Section 81-912, R.C.M. 1947, is amended to read as follows:

"81-912. At the time fixed for the sale, the lands shall be offered for sale at auction, in the order they appear in the notice of sale under the personal direction of the commissioner or the assistant commissioner, one of whom shall be present at the sale, and sold to the highest qualified bidder under the following restrictions: No lands shall be sold for less than the appraised value; tillable lands capable of producing agricultural crops shall not be sold for less than ten dollars ($10.00) per acre, and lands principally valuable for grazing purposes shall not be sold for less than five dollars ($5.00) per acre. (matter deleted)

It is further provided that the lessee of the land need not make a higher bid than others, but shall if bidding an equal amount be given the preference. The lands shall be sold as nearly as practicable according to the sub-divisions in which they are advertised,

and care shall be taken not to sub-divide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

If any successful bidder at such sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than fifty dollars ($50.00) nor more than one thousand dollars ($1000.00) to be determined by the state board of land commissioners according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the commissioner, the attorney general shall institute a suit for the recovery thereof in the name of the state of Montana.

The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law."

Section 4. Section 81-1701, R.C.M. 1947, is amended to read as follows:

"81-1701. The state board of land commissioners is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with the enabling act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing and removoing the same upon the terms and conditions herein prescribed, to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state of Montana. This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams, and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state of Montana; but in such cases and in all cases where the lands are under lease for grazing, agriculture or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state of Montana the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease. (matter deleted)

Oil and gas leases issued under the provisions of this act shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil and gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the state board of land commissioners."

Section 5. Section 81-102, R.C.M. 1947, is amended to read as follows:

"81-102. In this act, the term "department" shall mean the department of state lands and investments; the term "board" shall mean the state board of land commissioners; the term "commissioner" shall mean the commissioner of state lands and investments; the term "assistant commissioner" shall mean the assistant commissioner of state lands and investments; the term "state lands" or "lands" shall mean and include all lands that have heretofore been granted and that hereafter may be granted to the state by the United States for educational purposes or for any other purpose, either directly or through exchange for

other lands; all lands that have become the property of the state through deed or devise from any person; all lands to which the state has become the owner through a mortgage to the state, either by foreclosure or otherwise; and all lands that have become the property of the state through the operation of law, except, however, such of these lands as the state has sold and conveyed through the issuance of patent; and except also lands that are used as building sites, campus grounds, or for experimental purposes by any of the state institutions, and have become the property of such institutions. (matter deleted)"

Section 6. Sections 81-911, 81-914, 81-1901, 81-1902, 75-3729, 75-3730, 75-3731, 75-3732 and 75-3733, R.C.M. 1947 are repealed.

APPENDIX B

PURCHASE PRICE OF STATE GRAZING LANDS SOLD SEPTEMBER 10, 1958 - JULY 13, 1960*

Date of Sale	County	Acres	Price Per Acre	Acres Per AUM	Rental Applying 1959 Rate	Rental Applying 1960 Rate	Rental Applying 1961 Rate
9-10-58	Garfield	640	$ 7.00	10.67	$ 16.80	$ 32.40	$ 28.80
12-10-58	Teton	360	40.50	3.33	30.24	58.32	51.84
"	Toole	640	59.00	2.67	67.20	129.60	115.20
"	Blaine	640	20.00	3.56	50.40	97.20	86.40
"	McCone	640	22.00	4.85	36.96	71.28	63.36
"	Custer	642.96	25.00	3.35	53.76	103.68	92.16
"	Custer	640	35.00	3.56	50.40	97.20	86.40
"	Dawson	640	20.00	2.67	67.20	129.60	115.20
"	Dawson	320	12.00	3.33	26.88	51.84	46.08
"	Dawson	640	19.00	3.33	53.76	103.68	92.16
"	Dawson	640	18.00	2.96	60.48	116.64	103.68
"	Dawson	640	16.00	2.96	60.48	116.64	103.68
"	Powder River	640	31.00	3.33	53.76	103.68	92.16
"	Gallatin	640	20.00	4.44	40.32	77.76	69.12
2-11-59	Dawson	640	26.00	3.56	50.40	97.20	86.40
"	Glacier	640	20.00	2.67	67.20	129.60	115.20
5-13-59	Valley	160	63.50	2.13	21.00	40.50	36.00
"	Valley	80	60.00	2.11	10.64	20.52	18.24
"	Valley	80	122.00	2.11	10.64	20.52	18.24
6-10-59	Flathead	80	43.20	10.00	2.24	4.32	3.84

*Does not include Glacier Park exchange sales or tracts sold for summer cabins or townsites.

PURCHASE PRICE OF STATE GRAZING LANDS—(Continued)
SOLD SEPTEMBER 10, 1958 - JULY 13, 1960

Date of Sale	County	Acres	Price Per Acre	Acres Per AUM	Rental Applying 1959 Rate	Rental Applying 1960 Rate	Rental Applying 1961 Rate
9-16-59	Musselshell	640	13.50	4.10	43.68	84.24	74.88
"	Ravalli	76.57	20.00	3.48	6.16	11.88	10.56
"	Ravalli	633.68	20.00	3.52	50.40	97.20	86.40
"	Judith Basin	40	25.00	2.67	4.20	8.10	7.20
"	Judith Basin	640	22.50	3.15	56.84	109.62	97.44
"	Judith Basin	635.20	20.00	2.65	67.20	129.60	115.20
"	Judith Basin	553.45	24.00	2.40	64.68	124.74	110.88
"	Judith Basin	640	24.00	1.78	100.80	194.40	172.80
"	Judith Basin	640	22.00	2.42	74.20	143.10	127.20
"	Judith Basin	396.65	21.00	2.32	47.88	92.34	82.08
"	Chouteau	320	60.00	3.81	23.52	45.36	40.32
11-25-59	McCone	65	37.00	5.42	3.36	6.48	5.76
2-10-60	Meagher	480	60.00	2.05	65.52	126.36	112.32
"	Wheatland	360	28.00	4.44	22.68	43.74	38.88
"	Wheatland	280	28.00	4.44	17.64	34.02	30.24
"	Judith Basin	120	30.00	2.40	14.00	27.00	24.00
"	Judith Basin	600	31.00	2.11	79.80	153.90	136.80
"	Judith Basin	120	10.00	2.67	12.60	24.30	21.60
"	Judith Basin	40	15.00	2.67	4.20	8.10	7.20
"	Blaine	80	12.00	4.44	5.04	9.72	8.64
"	Blaine	160	22.00	2.91	15.40	29.70	26.40
7-13-60	Fergus	480	18.00	2.96	45.36	87.48	77.76
"	Custer	471.50	21.00	3.96	33.32	64.26	57.12
43 Sales		18,515.01	29.38*		1,690.24	3,257.82	2,895.84

*If the total purchase of $481,303.10 is divided by the total acreage of the forty-three tracts, the average price per acre is $25.99.